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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 54.

MATTHEW F. JOHNSON, DATIVE TESTAMENTARY EXECUTOR OF OLIVER J. MORGAN, DECEASED, JOHN A. BUCKNER, J. WEST MONTGOMERY, EDWARD SPARROW, AND DAVID N. BARROW, ADMINISTRATOR OF FERDINAND M. GOODRICH, DECEASED, APPELLANTS.

versus

STEPHENSON WATERS, ADMINISTRATOR OF THE SUCCESSION OF WILLIAM GAY, DECEASED, APPELLEE.

BRIEF FOR APPELLEE.

HENRY B. KELLY,
JULIUS ARONI,
Of Counsel.

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STATEMENT OF THE CASE.

On the 24th of January, 1872, William Gay, a citizen of Kentucky, filed his bill in this cause against Oliver T. Morgan, testamentary executor of Oliver J. Morgan, deceased, and against John A. Buckner, Ferdinand M. Goodrich, Edward Sparrow and J. West Montgomery, all citizens of Louisiana. Transcript, pages 1-16. The bill avers, in substance, that the said Oliver J. Morgan was, at the time of his death, indebted to complainant, upon certain drafts held by him, in the sum of $33,250, with interest from the year 1861 at five per cent. per annum; that on the 23d of December, 1870, he obtained judgment on the law side of the

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court for said amount, and that the debt is still due and unpaid; that on the 1st of May, 1860, the said Oliver J. Morgan made his last will, and shortly thereafter, to wit: on the 4th of October, 1860, died; that on the 15th of October, 1860, the will was probated before the proper court of the parish of Carroll; that by the terms of the will the said Oliver T. Morgan was appointed executor thereof, and that he accepted the trust, took the oath required by law and took upon himself the burden of the execution of the will; that thereupon he entered into possession of the personal and real estate of the testator; and that said estate—exclusive of slaves—was of the value of very nearly a million of dollars, or $985,353 80; whereof $947,153 80 were lands, and the residue, $38,200, personal property, as per inventory and appraisement duly made at the time.

The bill further avers that, since taking possession, as aforesaid, of said estate, the executor has received large sums in the way of rentals and revenues therefrom; and that the said personal and real estate, and rents and revenues, were largely more than sufficient, if honestly applied, according to law, to have paid and discharged complainant's debt, and all other debts of the said estate; that complainant had made and caused to be made repeated applications to the executor for payment in due course of administration, but that the said executor, fraudulently confederating and combining with the said John A. Buckner, Ferdinand M. Goodrich, Edward Sparrow and J. West Montgomery, and others, to the complainant unknown, to defraud the complainant, absolutely refused to pay the said debt or any part thereof; for reason whereof said confederates pretend and allege that the said real and personal estate and the said rents and revenues were comparatively of small value, and by no means sufficient to pay and satisfy the testator's debts, funeral expenses and expenses of administration; and that they have applied and disposed of the same towards the satisfaction of said debts and expenses, and that, at the same time, the said executor and the said confederates refuse to discover and set forth what moneys have come into the hands of said executor from the sale and disposal of said personal and real estate, and from the receipt of said rents and revenues, and how much of said moneys has been applied, and how, to the payment of the debts and expenses of said succession.

That, at other times, the said confederates admit that the said estate has not been administered upon and disposed of according to law, and that all of the lands of said estate have been collusively and illegally sold by said executor, and purchased by certain of said confederates, respectively, in lots and sub-divisions, at a price far below the real value thereof; and that this was done with the express and avowed purpose of defeating all recourse by complainant and other creditors against said lands, or the proceeds thereof, for the payment of these debts. But said confederates pretend that all irregularities, preceding or attending said sales, have been cured, and the sales rendered valid and binding in law, notwithstanding said collusion and fraud, by virtue of certain proceedings, had under the laws of Louisiana, subsequent to said sales by process of monition.

Whereas, complainant charges the truth to be that the said personal and real estate, and rents and revenues, were abundantly sufficient to pay complainant's debt and all other just debts of the testator; and that the said confederates, or some of them, have possessed and fraudulently converted the same to their own uses without making satisfaction to complainant for his said debts.

That the said confederates, combining and confederating, as aforesaid, to defraud complainant and other creditors, in furtherance of said fraudulent scheme, presented, or caused to be presented, to the parish court of the parish of Carroll, in the month of December, 1868, on behalf of the said John A. Buckner, as natural tutor of his minor child, Mollie Buckner, and of other alleged creditors of said testator, and on behalf of said executor, a petition, which was signed by said Sparrow & Montgomery, as attorneys of said alleged creditors, and by said F. M. Goodrich, as attorney for said executor, in which petition it was represented that the lands belonging to said estate *were not producing any revenues* (which was not true), and that it was necessary to sell all of said lands to pay the debts of the estate; and it was prayed that a new inventory and appraisement of said lands be made, and that an order of sale should issue to said executor, authorizing him to sell said lands; upon which petition an order of court was obtained that the lands of the estate should be sold in sub-divisions, *in such manner as said executor may direct*, and, in other respects, according to law.

The bill charges that, in furtherance of their fraudulent scheme, the confederates proceeded to procure a false and fraudulent appraisement to be made of the lands, through the agency of two incompetent and corrupt appraisers, whereby the value of the lands was reduced from $947,153 80, the amount of appraisement in the first inventory, to $43,205 25; that a portion of said lands are wild and swamp lands, and a large portion cultivated and improved lands; that some of said lands are very valuable and some of less value; that, accordingly, in the first inventory, which was honestly made by competent appraisers, the said lands are appraised in divers tracts and parcels, and at various values, ranging from $95 to $20 per acre; while, in said second false and fraudulent appraisement, the lands are all valued, without distinction or discrimination, at the preposterously low price of $2 75 per acre.

The bill further avers that, in pursuance of said fraudulent scheme, the said Oliver T. Morgan, after having, as aforesaid, obtained, in his capacity of executor of Oliver J. Morgan, an order for the sale of *all* of said lands as the *property of the succession of Oliver J. Morgan*, to pay the debts of said succession, appeared again in the same court, by the same attorney, F. M. Goodrich, in a character and capacity adverse to, and irreconcilable with the duties of his trust as executor of Oliver J. Morgan, to-wit: in the alleged capacity of executor of the will of Julia Morgan, his deceased wife, and in his said last capacity claimed an undivided three-fourths of all the lands of the estate of Oliver J. Morgan, as the property of the estate of the said Julia Morgan; and from the same court, which, upon his application as executor of Oliver J. Morgan, had ordered *all* of the lands to be sold as the property of the succession of Oliver J. Morgan, obtained an order, as executor of Julia Morgan, for the sale of an *undivided three-fourths of all of said lands*, as the property of the estate of Julia Morgan.

The bill goes on to aver that, acting in these two inconsistent capacities, under these two conflicting orders of sale, and in further pursuance of the fraudulent scheme of said confederates, the said Oliver T. Morgan proceeded to advertise and sell said lands in parcels and sub-divisions, so arranged between the said confederates as to facilitate the consummation of their fraudulent scheme; and that, on the 19th of January, 1869, in furtherance and consummation of said scheme, a fraudulent and illegal sale, predicated upon said false and fraudulent appraisement, was made of all the lands of the estate of Oliver J. Morgan, by Oliver T. Morgan, executor, to certain of his said confederates, at a barely nominal price, out of all proportion to the true value of said lands, as the said Oliver T. Morgan and his said confederates well knew.

That, at said illegal and fraudulent sale, of the 19th of January, 1869, the said Oliver T. Morgan adjudicated and pretended to sell to his said confederate, John A. Buckner, in his own name, 9171 acres of said lands, for the price of $3 per acre; that he adjudicated and pretended to sell to his said confederate, J. West Montgomery, pretending to act as agent for some principal or principals not named, 5040 acres at the same price of $3 per acre; and that he adjudicated and pretended to sell to said confederate, F. M. Goodrich, for a like price of $3 per acre, a tract containing 1500 acres, more or less.

The bill further avers that, prior to the aforesaid fraudulent appraisement and sales, the complainant, having the aforesaid just claim against the estate of Oliver J. Morgan, for $33,250 and interest, placed the same for collection in the hands of said Sparrow & Montgomery, who were attorneys at law, practicing in partnership in the parish of Carroll, and that they took charge of the same for him; and that in confederating and combining, as aforesaid, with the said Oliver T. Morgan, Buckner and Goodrich, and in conniving at and procuring the said false and fraudulent appraisement and sale, they acted in disregard of their professional obligations to complainant, and in fraud of his rights.

That the petition, signed by said Sparrow & Montgomery, as attorneys of John A. Buckner and others, in which it was alleged that the lands of the estate produced no revenues, was untrue in point of fact; that said lands, or the greater portion of them, were actually yielding revenues, and had been yielding revenues for several years; that in the years 1865, 1866 and 1867, lands of the estate were actually leased, but not a cent of the rental has been accounted for or distributed to the creditors; that valuable crops had been made thereon at the time of the filing of said petition; and that, at the time the said Sparrow & Montgomery, his attorneys, as aforesaid, to whom he looked for the protection of his rights, not only permitted, but aided and procured the said false and fraudulent appraisement and *sale of all the lands of said estate for $3 an acre*, the said lands or a greater portion thereof were then actually *rented for $10 per acre per annum.*

The bill further avers that had the said executor, or the said Sparrow & Montgomery, as they were in duty bound to do, informed complainant of the course of the administration, he would have taken steps to prevent the said illegal and fraudulent sale from being made; but that he was kept in ignorance of all of these fraudulent acts and doings until they had been fully consummated and carried out.

The bill further charges that, by said acts and doings of said confederates, the said estate was made to appear as insolvent, and, yet, that no meeting of creditors was ever called, as required by the law of Louisiana, to deliberate upon what should be done, the law in this, as in most other respects, being set at naught, and disregarded by said confederates in carrying out their scheme of fraud and spoliation.

Complainant avers that, by reason of the premises, the said illegal and fraudulent sales of all the lands of said estate, to certain of said confederates, are not voidable merely, but absolutely null and void, and entitled to no force or effect whatever in law or equity, to the prejudice of the rights of complainant and other creditors of said estate.

The bill further charges that the said confederates, who purchased the said lands at said fraudulent and illegal sale, conscious of the gross fraud and manifold irregularities that characterized the entire transaction, have sought to cure and cover up said frauds and irregularities by subsequent proceedings by way of monition; but complainant says that he is advised that such proceedings extend only to remedy defects of form and not of substance, and that a judgement, fraudulently obtained, cannot thereby be helped or aided, or made valid; and that, therefore, the subsequent proceedings by way of monition of certain of said confederates, cannot avail to secure them in the enjoyment of the fruits of their fraud.

The bill prays that all of said fraudulent sales be set aside, and the property be decreed to be still the property of the succession of Oliver J. Morgan, and liable for its debts; and prays, also, for an account of rents and revenues, and of the personal estate, and for the payment of the debt out of assets of the estate.

On behalf of the several defendants separate pleadings were filed. In their main features they are all substantially the same, and purport, in each instance, to be an answer, plea and demurrer to the bill. These elements of defence, apparently, all go to the *whole* bill, and are indiscriminately intermingled. It is difficult to say where the demurrer ends and the plea begins, or where that ends and the answer commences.

Oliver T. Morgan, executor, in his answer, plea and demurrer, Trans. p. 66. says, that it is true that Oliver J. Morgan made his will, and died, and that he (Oliver T. Morgan) is executor, as averred in the bill. That it is true that complainant has a claim against the succession, which has been reduced to judgment in the Circuit Court, for about the sum set forth in the bill; but that said judgment was rendered erroneously, and that he had sued out a writ of error to the Supreme Court of the United States. He admits that the estate of Oliver J. Morgan was duly inventoried, and was appraised, in the years 1860 and 1868. for the amounts mentioned, in the bill; but says that, as advised by counsel, *one-fourth only of the lands therein mentioned* should have been inventoried as the property of the succession of Oliver J. Morgan, *the other three-fourths having been, by deed of sale and gift, disposed of to Mrs. Julia Morgan, by the said Oliver J. Morgan,* by act passed before H. Hillman, notary public, on the ninth day of March, 1858. That what took place in reference to said succession will more fully appear from a copy of the mortuary proceedings filed as part of the answer. That it will appear by said proceedings that the complainant was a party thereto; *that his claim had been recognized as a valid and just debt against the succession, as will appear by his acknowledgment thereof* on the original claim; and that it is the same demand described in the judgment, before mentioned, recovered in the Circuit Court of the United States for the district of Louisiana, described and set forth in complainant's bill. He admits that there was a sale of the real estate, under the orders of the Parish Court of the parish of Carroll, and that such proceedings took place in reference to the said property as are described in the mortuary record; and avers that the sale was open, regular and according to law and the order of the court. That deeds have been made, *and the price of the property been paid;* that the sale was reported to the court, and was, after the legal delays, homologated and approved.

For further answer, he says, that it is true that a monition was sued for in the sales to Buckner and Goodrich, and judgment rendered; and that such proceedings were held, as will appear from the exhibit filed with the answer. That the said monitions are regular; that the requirements of the law were complied with, and the titles given to them confirmed.

He pleads the said proceedings in the courts aforesaid in bar as judgments of courts of competent jurisdiction, having entire control over the subject; that the said courts were authorized to decree as therein decreed, and that their judgments are in full force and effect; that the complainant was a party to the said judgments, under the mode of citation and notice provided by the laws of Louisiana; that he is concluded thereby, and this court ought not to take cognizance of a bill for the impeachment of said orders and decrees, but that complainant should be required to present his objections in the same courts where the said judgments and decrees were rendered. He avers that the same are valid, true and just in all their parts; and pleads the prescription relative to appeals, actions of nullity and revocatory actions.

For further answer, he says that it will appear from the mortuary proceedings what debts were proved and recognized in said court; that there were due privileged claims, having priority by reason of their mortgage and lien, as will appear in the tableau contained in the record; he avers that *those claims were more than sufficient to absorb the property of the succession* under the most favorable estimate of the property.

In answer to the interrogating part of the bill he says, among other things, not necessary to be repeated, that it *is a fact that he entered into possession* as executor of the property, real and personal, as inventoried, as the property of the estate of Oliver J. Morgan, three-fourths of which, he says, by way of parenthesis, stood in the name of Julia Morgan, of whose succession he was also executor; and it is a fact that the property so taken possession of by him *was inventoried at nearly a million of dollars;* and it is true that the inventory and appraisement made at the time showed *personal property of the estate to the value of $28,200, and landed property to the value of $947,153 80.*

That it is a fact that a second appraisement was made of the landed property when ordered to be sold, and that the said landed property was, by this second appraisement, valued at $13,205 25; but that it is not true that it was a false or fraudulent appraisement procured by respondent or any of his co-defendants. That it is a fact that all of the lands were sold by respondent, as shown in the mortuary proceedings, in lots and sub-divisions, and bought by John A. Buckner, Ferdinand M. Goodrich, and J. W. Montgomery, *agent for the ordinary creditors of the estate.*

That it is not a fact, as respondent is informed and believes, that Sparrow & Montgomery were ever employed by complainant as his attorneys to secure and collect his claim against the succession. On the contrary, at the time the said claim was presented to respondent for allowance by Gen. Sparrow, *who was then attorney and acting also as agent for this defendant*, he distinctly informed respondent that he had only promised and undertaken, *as a friend of Mr. Gay*, to have his claim acknowledged by the executor and ranked by the judge of the Probate Court, as he conceived nothing else remained to be done. *This statement was elicited because respondent remonstrated and asked if he, as the attorney for the succession, ought to take claims against it?* (And yet it seems from the proceeding part of the answer of this defendant that J. W. Montgomery, Gen. Sparrow's law partner, took upon himself, without objection from the executor, as far as appears, to act for the ordinary creditors of the succession generally as their agent and attorney.) The respondent admits that it is a fact that the claim of complainant has not been paid in whole or in any part thereof.

In conclusion, he prays that *his answer may be regarded as a demurrer* to the bill, for want of proper parties:

1st. That each of the creditors of the succession of Oliver J. Morgan is interested in the price of the property and *in maintaining the sale.*

2d. That the whole subject of the suit has been subjected to the jurisdiction of the court in which the succession was opened and administered, and that its powers are general, and are sufficient for disposing of all the rights of the parties.

3d. That there is no ground for the interposition of this court.

Finally, he says: "And now *having fully answered the bill,* this defendant prays to be hence dismissed with his costs."

This answer was put in under oath, but it is noticeable that the respondent *fails to make any reply whatever* to the averments of the bill relating to the personal estate of Oliver J. Morgan, except that in answer to the third interrogatory he admits that personal property, valued on the inventory at $38,200, came into his possession as executor. What became of it he does not say, nor is any part of it accounted for anywhere in the mortuary proceedings, made part of the answer. The same remark may be made as to the averments of the bill, with regard to rentals and revenues, with reference to which the answer of the executor *is wholly silent.*

The answers pleas and demurrers of the other defendants are so nearly identical in form and substance with those of the executor, that is not necessary to a proper comprehension of the case made by the pleadings to make any further reference to them here.

On the 8th of December, 1877, a supplemental answer was filed on behalf of all the defendants, setting forth that, since the institution of this suit, the judgment at law, recovered by the complainant against the executor of Morgan, and referred to in the bill, had been reversed and annulled upon writ of error by the Supreme Court, and is not now in force and effect; and that the suit has not been further prosecuted to judgment in this court, but is abated by the death of the plaintiff; and the defendants plead the prescription of five years as applicable to the bills of exchange described in the bill.

Subsequently, with leave of court, the bill was amended (Transcript, 353), by inserting therein in the proper connection, the averment that all of the drafts held by the complainant mentioned in the bill, "were presented for and on behalf of said William Gay, to the said Oliver T. Morgan, executor, as aforesaid, for acknowledgment by him, on the 3d day of April, 1866, and were, on said day, by said executor, duly acknowledged in writing as lawful debts of said succession of Oliver J. Morgan, and that on the 5th day of April, 1866 all of said drafts were presented to the judge of the court, having jurisdiction of said mortuary proceedings, and were, by him, allowed, ranked and ordered to be paid in due course of administration, all in accordance with Articles 983, and following of the Louisiana Code of Practice, and that complainant is advised, and, therefore, avers, that the acknowledgment, allowance and order aforesaid, were tantamount and equivalent in law to a *judgment in favor* of said William Gay against the said succession of the said Oliver J. Morgan, upon all of said drafts, for the full amount thereof, with interest thereon, as set forth in the bill."

After the cause was at issue, William Gay, the complainant, died, and the suit was revived in the name of his administrator, Stephenson Waters. Subsequently, Oliver T. Morgan, the executor of Oliver J. Morgan, and Ferdinand M. Goodrich, two of the original defendants, died, and the suit was revived against Matt. F. Johnson, as dative testamentary executor of

Oliver J. Morgan, and against David N. Barrow, administrator of the succession of Ferdinand M. Goodrich.

THE EVIDENCE.

A large mass of evidence, documentary and oral, is found in the record, and it makes out a grosser case of fraud and spoilation, even than that stated in the bill.

As to the following points, there is no controversy; the facts are not only established by the proofs, but admitted in the answers of defendants:

1. That the estate of Oliver J. Morgan was indebted to the complainant, William Gay, in the sum of $33,250, with interest, as stated in the bill.

2. That this indebtedness was acknowledged by the executor, and ordered by the Probate Court to be recognized among the acknowledged debts of the succession.

3. That no part of said debt has been paid.

4. That the lands belonging to the estate were appraised, in 1860, at $947,153 80, the slaves at $196,961 00, and the personal or movable property at $38,200 00, and that all of this property came into the possession of the executor.

5. That all of said lands, which had been appraised in 1860, at prices ranging from $95 to $20 per acre, were, in December, 1868, appraised, indiscriminately, at $2 75 per acre, and on the 19th of January, 1869, adjudicated and sold, in lots and tracts, as stated in the bill, for the price of $3 00 per acre, to the defendants, John A. Buckner, Ferdinand M. Goodrich and J. West Montgomery, respectively.

It will be conducive to a clearer comprehension of the case disclosed in evidence to advert, at the outset, to the *personel* of the family of Oliver J. Morgan, as it was in March, 1858, when the document denominated a deed of sale and gift, to be found at page 55 of the transcript, and in May, 1860, when the will, to be found at page 119, were executed by him.

At those dates his sole heirs at law were a daughter, Julia Morgan, wife of Oliver T. Morgan, named as executor in the will, and a great grandson, Oliver Kellum, whose deceased father was a son of Ann Morgan, a deceased daughter of Oliver J. Morgan.

In case of intestacy the estate of Oliver J. Morgan would, under the law of Louisiana, C. C. Arts. 894, 895, 902, have passed, by inheritance, to the daughter and the great grandson, who, by right of representation of Ann Morgan, his grandmother, would have been entitled to share the estate *equally* with his grand aunt, Julia. They were not only the sole heirs of Oliver J. Morgan, they were also his *forced heirs*. Under the law of Louisiana, a testator who leaves one child and descendants in whatever degree of another pre deceased child can only dispose by will of one-half of his estate; the law reserves one-fourth at least of the estate to the surviving child, and one-fourth to the descendants of the pre-deceased child. C. C. 1493, 4, 5.

Julia Morgan, it appears, was the mother of several children, grandchildren of Oliver J. Morgan, whose purpose it was, as manifested in the document, styled a deed of sale and gift of the 9th of March, 1858, and the will of May 1st, 1860, to equalize, as far as the law would allow, the division of his estate after his death between this great grandson, Oliver Kellum, and his other descendants, by reducing the portion which his great grandson would be entitled after his death, from one-half to one-fourth of the estate.

Prior to the death of Oliver J. Morgan, his wife, Mrs. Narcissa Morgan, had died intestate, leaving as her estate her half interest in the community, which had existed between her and her husband. In November, 1857, Oliver J. Morgan brought suit in the proper court, transcript p. 147, for the purpose of effecting a partition of the community property, one-half of which was his, and the other half of which belonged in equal portions to Mrs. Julia Morgan, the daughter, and to Oliver Kellum, the great grandson of Narcissa Deeson, deceased wife of Oliver J. Morgan, and her sole heirs. To this suit Mrs. Julia Morgan, duly authorized by her husband, and Mrs. Malinda Kellum, mother and natural tutrix of the minor, Oliver Kellum, appeared and answered. The court ordered the partition; the slaves were divided in kind, and the landed property was ordered to be sold for cash, provided it brought the appraisement. On January 18th, 1858, the property was adjudicated to Oliver J. Morgan *for cash*, he bidding the appraised value; one-half of the price of the adjudication he retained, as half owner of the property; of the other half, the share coming to Mrs. Julia Morgan, amounting to $67,495 70, and the share coming to the minor, Oliver Kellum, of like amount, were left in the hands of Oliver J. Morgan, the adjudicatee, by request of Mrs. Julia Morgan and Mrs. Malinda M. Kellum, tutrix, to be paid when demanded by them. Transcript, p. 170.

The money appears to have been allowed to remain in the hands of Oliver J. Morgan, without security of any character being required. No mortgage was given, nor did any legal or tacit mortgage attach to secure the price of adjudication, the sale having been made under the order of court for cash. Mrs. Julia Morgan, at the time, was of full age and acted with the authorization of her husband. Her father was not her tutor or guardian at the time, nor did he occupy any such relation towards his great grandson, Oliver Kellum, whose mother was his tutrix.

The mortgage certificate filed in this case (Trans. 288) shows that there was no mortgage recorded against Oliver J. Morgan, to secure the price of adjudication, and, for all that appears, it may have been paid during the lifetime of Oliver J. Morgan.

Subsequent to the partition sale, John A. Buckner married Widow Malinda M. Kellum, and, consequently, became co-tutor of the minor, Oliver Kellum.

The minor, Oliver Kellum, died during the late war, and his property passed to his mother, Mrs. Malinda M. Buckner, who also died soon thereafter. The issue of the marriage between John A. Buckner and Widow Kellum was a daughter, Mollie, who inherits from her mother, and therefore now holds the rights and property formerly vested in the minor, Oliver Kellum. Mrs. Julia Morgan died subsequent to the death of her father, Oliver J. Morgan. The surviving heirs are Mrs. Matt. F. Johnson, wife of the present executor, and Mrs. George Johnson. Oliver T. Morgan, the husband of Mrs. Julia Morgan, died since the institution of these proceedings.

The estate of Oliver J. Morgan consisted of five plantations, together with slaves and movables, viz: Wilton, Albion, Melbourne, Morganna and Westland, containing in all 15,711 acres. This property came into possession of Oliver T. Morgan, executor, and was treated by him and the heirs as the property of Oliver J. Morgan. It has yielded large revenues, for which the executor has never accounted.

John A. Buckner testifies (Rec. p. 196) that in 1860 Wilton produced five hundred bales of cotton, Albion seven hundred bales, Morganna about six hundred bales, Melbourne seven hundred bales; the yield of Westland plantation he does not know, as Oliver T. Morgan planted on that place. He further testifies that 450 pounds was a commercial bale, and cotton was then worth from eight to nine cents per pound.

This evidence shows that, exclusive of Westland, there were 2500 bales, worth $90,000, the revenue of those plantations in 1860, which came into the hands of the executor, and are not accounted for, and that there were crops made in 1861, 1862 and 1863; that the places were also cultivated in 1864 and 1865, and it must be presumed that there were additional revenues from these years.

In 1866, John A. Buckner rented Melbourne plantation to H. B. Tibbits, at ten dollars per acre, and Matt. F. Johnson, the husband of one of the heirs, rented to the same party and for the same price, the Wilton and Albion plantations. Buckner, in his testimony (Record p 197), admits that he received from Tibbits $3000 in cash.

In 1867, Buckner cultivated Melbourne, and Matt. F. Johnson planted on Wilton and Albion plantations in partnership with Samuel L. Chambliss. So in 1868.

Buckner testifies (Transcript, p. 198) that there has been no final division between the heirs; those of Julia Morgan have held possession of the land they had before the war, and he did the same. No property was held in common; there was only a temporary division. He has held possession of Melbourne ever since the war, and the heirs of Julia Morgan held Wilton and Albion; they claimed three-fourths of the estate; but all the heirs have always recognized Oliver T. Morgan as executor, though he never required of them any account of the rents and revenues. (Record, p. 197).

Henry Goodrich testifies (Record, p. 215) that he was employed to manage Wilton and Albion, in December, 1868, by Matt. F. Johnson, then acting as agent of Oliver T. Morgan, executor, and continued the management for four years; that in 1869, these two places produced eight hundred, and in 1870, seven hundred bales of cotton, about the same in 1871 and 1872, making 2900 bales during these four years, one fourth of which was received for rent, and that the average price was about sixty dollars per bale net. (Rec. p. 216). So that the revenues during that time amounted to $43,500, no part of which is accounted for, and it must be presumed that there was an additional revenue from the other plantations belonging to the estate.

C. M. Tilford, who succeeded Goodrich as manager, and continued to manage during the four subsequent years, testifies (Rec. p. 192) that the annual rental of said plantations (including Melbourne), since 1873, has been about fifteen thousand dollars net, down to the present time. There must, consequently, have been a revenue of $75,000 from 1873 to 1878.

In addition to these large revenues, this executor obtained judgment against the United States, under which a large sum of money was paid to him, for which he also failed to account. In the Record (p. 289) will be found the suit styled: Oliver T. Morgan, Executor of the Estate of Oliver J. Morgan vs. The United States, No. 3420 of the docket of the Court of Claims, wherein judgment was rendered for $21,870 68, and it appears from a certified copy of the United States Treasurer's check, dated September 10th, 1874 (Rec. p. 287), that Matt. F. Johnson, executor of Oliver J. Morgan, received said $21,870 68 for the proceeds of sale of cotton captured by the United States forces, during the late war, and taken from said plantations; but no part of this money was ever accounted for.

The evidence, thus far, clearly establishes that the executor received, exclusive of the personal property valued at $38,200, exclusive of the rental of Wilton, Albion and Melbourne, in 1866, 1867 and 1868 (except $3000 cash, received from Tibbits in 1866), when said plantations were rented at ten dollars per acre, or cultivated by the heirs themselves, and exclusive of the rental of Melbourne, in 1869, 1870, 1871 and 1872, the following amounts:

1st.	The proceeds of 2500 bales of the crop of 1860, valued at	$90,000 00
2d.	Recovered from United States	21,870 68
3d.	Cash from Tibbits in 1866	3,000 00
4th.	Revenues under Goodrich's management	43,500 00
5th.	Revenues under Tilford's management	75,000 00
		$232,870 68

In the account rendered by the executor, no portion of these large revenues are accounted for; he has not paid any debts of the estate he represented, and the conclusion is unavoidable, that the heirs of Oliver J. Morgan, with the assistance of the executor, have appropriated everything for their own benefit, and left complainant's claim of $33,250, acknowledged by the executor in 1866 as a just claim against the succession, and ranked by the judge as valid, and ordered to be paid in due course of administration, entirely unsatisfied. With intent to preclude the complainant and other creditors from having recourse against the plantations for the payment of their debts, the heirs and executor, assisted by Sparrow & Montgomery, and F. M. Goodrich, proceeded to make, through the form of a succession sale, a simulated and fraudulent transfer of all these valuable plantations to themselves and to J. W. Montgomery, of the Westland plantation, almost worthless, containing 5040 acres of low, overflowed and abandoned lands, who took a paper title in the assumed capacity of agent of creditors, without authority from any creditors, nor have these ratified or accepted that purchase.

Having thus spirited away first, the personal property and large revenues, then the princely landed estate, without accounting for the same and without paying complainant's claim, the executor obtained his discharge.

A more palpable fraud, to deprive creditors of their just right, was, perhaps, never attempted through the channel of a court of justice. Sparrow & Montgomery were complainant's attorneys to collect his claim against the estate of Morgan. See Sparrow's letter of February 16th, 1866, (Rec. p. 103). On April 19th, 1866, Sparrow wrote to William Gay [Rec. p. 104]: "All your notes against the estate of Oliver J. Morgan, handed me in New Orleans, have been acknowledged by the executor and ordered to be paid by the District Judge. Shall I require Henry Goodrich to acknowledge them? and if so, and if he declines, what steps shall I take?" [Henry Goodrich was a party to the notes]. On August 22d, 1866, he wrote again [Rec. p. 104]: "I want, if possible, either by leasing, selling or cultivating some of

Judge Morgan's fine lands, to pay a dividend to the creditors next winter." Here is one of the important links of this great chain of fraud. An examination of the record of the mortuary proceedings of Oliver J. Morgan shows that Sparrow & Montgomery were not the attorneys of record of the executor, and yet they set up a claim of ten thousand dollars for professional services to the estate, assign it to F. M. Goodrich, who was the attorney, and with this claim [transcript, 329-330], Goodrich bought in the Morganna plantation at the pretended succession sale of January 19th, 1869. Only after the sale, when they presented what they call his final account, and asked the court for the discharge of the executor and the homologation of these sales, do they, for the first time, appear of record as attorneys *for the executor*. [Rec. p. 329].

The evidence thus discloses the strong pecuniary motive operating upon Sparrow & Montgomery. F. M. Goodrich was the adjudicatee, and took the paper title of Morganna plantation. But W. A. Johnson, who was afterwards the commercial partner of said F. M. Goodrich, testified [Rec. p. 88] that J. W. Montgomery became indebted to said Goodrich and Johnson, and that he settled in part his large debt of some ten or twenty thousand dollars, by turning over to said Goodrich his, Montgomery's, interest in the Morganna plantation, which already stood in Goodrich's name, and that, subsequently, said firm of Goodrich & Johnson transferred said plantation to one of their creditors in discharge of a debt due by them.

The same pecuniary motive operated upon Oliver T. Morgan, the executor, who, as the husband of Julia Morgan, was deeply interested in behalf of the heirs of his deceased wife, who after having used and enjoyed for many years the large revenues of the estate, devised a plan with John A. Buckner, who had a like pecuniary interest, to get rid of the creditors without paying them, and at the same time acquire title to the largest and most valuable portion of the estate. To effect this, the services of those attorneys were needed, and their services were rewarded as above stated. They received the Morganna plantation. Wilton, Albion and Melbourne plantations were given to John A. Buckner for the Morgan family, and J. W. Montgomery took it upon himself to appear on behalf of the creditors and accept, for them, without any authority whatever, the Westland tract of 5040 acres of overflowed and wild lands, proved to be worth only the nominal price of $1 25 per acre.

The petition for the order of sale was the joint petition of John A. Buckner, natural tutor of his minor child, Mollie Buckner, and others claiming to be creditors of the estate, and of the executor, Oliver T. Morgan. The petition is signed by Sparrow & Montgomery, as attorneys for the creditors, and by Ferdinand M. Goodrich, as attorney for the executor.

Shortly after the filing of this petition, to wit: on the 19th of January, 1869, the sale by the executor took place and all the lands of the estate were distributed between Buckner, Goodrich and Montgomery, as already stated. The pretended sales, as appears by the deeds, Transcript, pages 105, 106, 107, were for the uniform price of three dollars per acre. The evidence shows that the lands adjudicated to Montgomery, in the assumed capacity of agent for creditors, were wild, overflowed and abandoned lands, worth not more than the nominal price of $1 25 per acre, while the lands adjudicated to Buckner and Goodrich were very valuable, some estimated as high as $75 per acre, while on one of the places, Wilton, there was a residence costing $20,000. Transcript, page 210.

Montgomery himself testifies, Transcript, page 236, that Westland was not worth more than $1 25 per acre, and yet, without authority from the creditors, he assumed the right to buy it for them, while he allowed the really valuable lands of Melbourne, Wilton, Albion and Morganna, for which three dollars an acre was no equivalent at all, to be adjudicated to Buckner and Goodrich at this price.

Morganna, containing fifteen hundred acres, was adjudicated to Goodrich, and Melbourne, Wilton and Albion, containing nine thousand one hundred and seventy-one acres, were adjudicated to Buckner.

On the second of June, 1869, the petition of Oliver T. Morgan, executor, signed by Sparrow & Montgomery, as his attorneys, was filed in the Parish Court of the parish of Carroll, in which it was represented that the executor had fully administered the succession, and that, by order of the court, the whole of the property of said estate, *consisting of unproductive lands,* had been sold by the executor, on the 29th of January, 1869; that owing to the greatly depreciated value of said property, consequent upon the inefficiency and scarcity of labor, and the want of protection from high water, but a comparatively small sum was realized from such sale, and that the money so realized was appropriated by the executor to the liquidation, in part, of two preference claims, and the balance, being an undivided interest, among a number of ordinary creditors, in 5040 acres of land bought in by their attorney, which is to be distributed among them, according to their respective demands. Transcript, page 228.

An account is annexed to this petition, the credit side of which—Transcript, page 330—is as follows

By this amount realized by the sale at public auction of 9171 acres of land, bought by John A. Buckner, as per return on the writ of sale	$ 27,513 00
By this amount realized by the sale under order of court, mentioned above, of 1500 acres of land, bought by Ferdinand M. Goodrich, as per return on said writ	4,500 00
By this sum, for which 5040 acres of land was adjudicated (as per return on writ) to the creditors mentioned on the debt side of the account, and which amount accountant prays may be allowed as credits on their respective demands, ratably	15,120 00
	$ 47,133 00

On the debit side of the account, Transcript, page 329, the exact amount, $27,513 00, credited to proceeds of the sale to Buckner of 9171 acres of land, is accounted for by the executor as paid by him, on the 23d of January, 1869, to "John A. Buckner, tutor of his minor child, Mollie Buckner, on an acknowledged and preferred claim descending to her from Mrs. Narcissa Deeson, wife of O. J. Morgan;" and the exact amount, $4500, credited as the proceeds of 1500 acres of land to Goodrich, is accounted for by the executor, as follows: 'To this amount paid Ferdinand M. Goodrich, *assignee of an acknowledged account held by Sparrow & Montgomery, attorneys, against said estate, for $10,000 for professional services and preferred by law.*"

The only services, which, from the record of the proceedings in the succession of Oliver J. Morgan, appear to have been rendered by Sparrow & Montgomery, as attorneys of the succession, are the filing of the petition and account, and the proceedings consequent thereon, after the pretended sale of the 19th of January, 1869, of all the lands of the estate for three dollars an acre to Buckner, Goodrich and Montgomery; and for this they made and procured for themselves the allowance of a fee of ten thousand dollars as a preferred claim against the estate.

At pages 333-34 of the Transcript, are to be found the following cross-interrogatories propounded to J. W. Montgomery:

First cross-interrogatory--Was or was not, at the sale of the property of the succession of O. J. Morgan, deceased, the Morganna plantation acquired by you, though the apparent title was taken in the name of F. M. Goodrich?

Second cross-interrogatory--Did you or not, subsequent to the sale of the Morganna plantation to F. M. Goodrich, hold some equitable title to said plantation, which was finally disposed of when you settled your indebtedness to the commercial firm of Johnson & Goodrich, then commission merchants in New Orleans?

Third cross-interrogatory—Were you or were you not in-

indebtedness of Johnson & Goodrich to Boyd, of nearly twenty thousand dollars, was settled entirely, by the transfer by Goodrich to Boyd, of the Morganna plantation.

With the exception of the comparatively worthless lands, which Montgomery pretended to buy in for the creditors, and of the really valuable plantation, Morganna, which was adjudicated to Goodrich for a nominal price settled for with the executor by a credit on account of a charge for services as lawyers of the estate by Sparrow & Montgomery, all of the lands of the estate constituting the three fine plantations of Melbourne, Wilton and Albion. were adjudicated for three dollars an acre to John A. Buckner. The adjudication and the deed to Buckner, both purport, upon their face, to have been made to him in his own right. Transcript pages 140, 109, and the deed states that he "paid up the amount of his bid."

This is contradicted by the account afterwards filed by the executor, which shows that no such payment was made, but that Buckner was credited with the amount of his bid, in account with him as natural tutor of his minor child, Mollie Buckner, upon an assumed indebtedness of a privileged character, of the estate of Oliver J. Morgan, to this minor. No other consideration whatever passed for the transfer to Buckner of Melbourne, Albion and Wilton plantations. There was no reality in the transaction at all. The whole thing was a sham and a simulation, contrived and carried out in the supposed interest of the heirs of Julia Morgan, as well as of the minor Mollie Buckner and her father, and designed to cover the property from the pursuit of the creditors of the estate.

That the transaction was a bald simulation, and not at all what it purported on its face to be, is manifest from the testimony of John A. Buckner himself. In his testimony taken in 1878, *nine years* after the pretended sale to him of Melbourne, Albion and Wilton plantations, he says, transcript, pp. 197, et seq.: Witness has had control of Melbourne ever since the war, or has controlled it through his agents or lessees. Has always paid the taxes on Melbourne since the war, and until the present time. The taxes on Wilton and Albion since the war have been paid by Matt. F. Johnson through his agents.

Witness says that he has never had coporeal possession of Wilton or Albion plantations. *Since the war, Matt. F. Johnson has had actual control and management of Wilton and Albion plantations, as he, witness, supposed, in the interest of his wife, one of the heirs, and the other heirs of Julia Morgan. Matt. F. Johnson and the heirs of Julia Morgan have never set up any adverse claim to witness in regard to Melbourne plantation. They have confined their pretensions to Wilton and Albion, and have had control of said plantations ever since the war, though Oliver T. Morgan, as executor, has exercised some control over the property.*

Witness states that Oliver T. Morgan or Matt. F. Johnson, never accounted to witness, who represents an heirship, for any of the cotton, mules, furniture, or other personal property belonging to the estate of Oliver J. Morgan.

That Matt. F. Johnson, in behalf, as witness supposes, of the heirs of Julia Morgan, has exercised full control over the property, and leased and controlled the property, and *exercised the rights of ownership over the same ever since the war*, except that Oliver T. Morgan, executor, exercised authority several years after the war. * * *

Witness says that the heirs of Julia Morgan have always claimed a greater share of the property than they considered him entitled to, as representing one of the heirships. There were two heirships to Judge Morgan's estate. One, witness represents, and the other, the heirs of Julia Morgan, represent.

The following question is propounded by counsel for complainant:

In the distribution of the property among the heirs of Oliver J. Morgan, wherein the heirs of Julia Morgan took

Wilton and Albion, and restricted witness, representing another heirship, to Melbourne, why did the heirs require such an unequal division? Was it or not on account of the extraordinary pretensions they set up as heirs of Julia Morgan, or why was it?

Witness says because they claimed three-fourths of the estate. He does not know upon what their claim is based. Witness refers counsel to the records; *says there has been no final division between the heirs. The heirs of Julia Morgan have held possession of the land they held before the war; and witness has held possession of the land he held before the war.* Witness does not hold the property in common; there is only a temporary division. Has held possession of Melbourne ever since the war, and the heirs of Julia Morgan have held possession of Wilton and Albion, except that the heirs recognized Oliver T. Morgan as executor, *but he did not require of them any account of the rents and revenues.*

Witness says that his understanding was, at the time of the sale, in January, 1869, *when he bought in the property for the heirs, that they were to receive their proportion of the property purchased in his name, and he was to retain his proportion. They were (the heirs of Julia Morgan) to take three fourths of the land, and witness one-fourth.* * * *

Witness says he don't know of any cash having been paid at the sale in January, 1869. He paid none. * * Transcript, p. 198.

And at p. 202, he says: Witness frequently consulted with Messrs. Sparrow & Montgomery, with regard to his individual rights, and as representative of his children, with regard to the succession of Oliver J. Morgan and Mrs. Oliver J. Morgan, who had died previously to her husband. Witness repeats that there were two heirships to the succession of Oliver J. Morgan, one represented by him and the other by the heirs of Julia Morgan. There was a conflict of interest between these two heirships. The heirs of Julia Morgan claimed three-fourths of the estate, and they were not willing to allow witness more than one-fourth of the estate. Witness knows what the will of Judge O. J. Morgan was, and that was, that the heirship of Julia Morgan was to have three-fourths, and the heirship represented by witness to have only one-fourth. Supposed this was the basis of the pretensions of the heirs of Julia Morgan. Knows that Matt. F. Johnson and the heirs of Julia Morgan, always insisted upon this proportion of the estate, and in their dealings with witness, always got the proportion of three-fourths. They have now in possession—(that is, in 1878, nine years after the pretended sale to Buckner)—one-half more of the property of said estate than witness; that is, the proportion held by witness and the heirs of Julia Morgan, are as one-fourth to three-fourths. * *

This witness, to whom Melbourne, Wilton and Albion were adjudicated in fee simple, in January, 1869, for three dollars an acre, testifies (Transcript, p. 210), that in January, 1869, such lands as Wilton and Albion *rented* for cotton at the rates of from 60 to 80 pounds of lint per acre, worth from 8 to 20 cents per pound, and when rented for money, at from *six* to *ten* dollars per acre, per annum.

And at page 212 of the Transcript, he testifies, as follows:

Question by counsel for complainant—Did you or not, consent to buy Wilton and Albion plantations, embracing some six or seven thousand acres of land, and to pay the entire price of adjudication out of your separate preference claim, as a creditor of the succession of Oliver J. Morgan, and then permit Matt. F. Johnson and the heirs of Julia Morgan to keep said two plantations for their own benefit; in other words, do you consider that your claim against the succession of Oliver J. Morgan has been extinguished, quoad the price of Wilton and Albion plantations, in view of the fact as stated by you, that you have never obtained possession of said plantations?

Witness answers that he bought in at the sale, under his mortgage, the three plantations, Wilton, Melbourne and Albion, and that on account of the will of Judge Oliver J. Morgan, he *retained the Melbourne plantation, which he occupied before the war, and left the other heirs in possession of the Wilton and Albion plantations, which they occupied and claimed before the war.* * * *

Question by counsel for complainant: Did or did not the adjudication of the 19th of January, 1869, produce any change of corporeal possession of Wilton and Albion plantations, and did or did not the possession of Melbourne and the possession of Wilton and Albion continue the same after the sale as it was before?

Witness answers: There was no change of possession.

This witness, John A. Buckner, is the principal defendant in this suit, and the main object of the proceeding is to set aside the pretended sale to him of the 19th of January, 1869, of Melbourne, Wilton and Albion plantations, and to subject them, with the other property of the succession of Oliver J. Morgan, fraudulently alienated at the same time, to the payment of complainant's debt. It has already been shown that the assumption that the debt claimed to have been due the minor, Mollie Buckner, by the estate of Oliver J. Morgan, on account of the price of adjudication of community property, at the cash sale thereof, made for partition, being left in the hands of Oliver J. Morgan, was a debt secured by privilege or mortgage on the property adjudicated to Buckner at the pretended sale of the 19th of January, 1869, is entirely without support or warrant in law, and that if any such debt existed, it was no more than an ordinary debt, entitled to no priority or preference whatever over any other ordinary debt of the succession. Oliver J. Morgan, when the price of adjudication at the cash sale to him of the half interest of his deceased wife in their community property was left in his hands by his daughter, Julia, and by the mother and tutrix of his great grandson, Oliver Kellum, was not the tutor or guardian of either his daughter or great grandson, and occupied, towards neither of them, any such fiduciary relation as to give rise, under the law of Louisiana, to any legal or tacit mortgage on his property, to secure payment of the sums so left in his hands.

The certificate from the mortgage office, at page 288 of the transcript, shows that there was not and *had not been, at any time'* any mortgage of any character, of record in that office, affecting any of the lands of Wilton, Albion, Melbourne, Morganna or Westland, embracing some fifteen thousand acres, except one, in favor of Francis Haney, affecting a tract of 1280 acres, about which there is no question in this proceeding at all.

In further proof of the collusive and fraudulent character of this pretended sale, reference is made to the testimony of Henry Goodrich, transcript, p. 215.

Question by counsel for complainant: Wilton, Melbourne and Albion, embracing about 9000 acres, were adjudicated to John A. Buckner, at succession sale, on the 19th of January, 1869, at the price of three dollars per acre. Now, knowing the lands as thoroughly as you have stated, do you regard the price of three dollars per acre as a just and fair price for these plantations, and if not, what did you consider a fair and just valuation per acre of the open land on said plantations, and also the just valuation of the woodlands on said plantations ?

Witness answers that three dollars per acre was a low valuation for said lands, owing to the financial condition of affairs at that time. Witness thinks that the open lands in 1869 were worth seventy-five dollars per acre, and the woodlands worth fifteen dollars per acre.

Witness says that he took charge as manager of Wilton and Albion plantations, in behalf of the heirs, in the winter of 1868, in the month of December, and continued in the employment of said parties in the management of said plantations, about four years, or until the month of April, 1873. That C. M. Tilford was his successor as agent in behalf of the same parties that witness represented.

Witness says that there was no change of possession of the property, resulting from the adjudication to John A. Buckner, at the sale of January 19th, 1869, except Matt. F. Johnson told witness to permit Buckner to remove one-fourth of the cabins from the Wilton to the Melbourne plantation, which Melbourne plantation had been in the possession of John A. Buckner, previously.

That John A. Buckner never interfered with witness in the control of Wilton and Albion plantations. He never gave witness any orders in regard to the management of said plantations, nor required of him any account of his administration as manager thereof, and never exercised any rights of ownership over said plantations.

Witness never considered Buckner the proprietor of the plantations which he, witness, was managing. Buckner was on the adjoining plantation. Witness was employed by Matt. F. Johnson, as agent of Oliver T. Morgan, executor. Buckner frequently saw witness in the management of said plantations, on behalf of the parties mentioned, and never interfered or made opposition thereto.

Witness says that, in 1871 or 1872, they had occasion to build a levee, at private expense, on the Mississippi river, at or near the point where Wilton and Melbourne joined, and this levee was very necessary to protect Wilton, Melbourne and Airlie plantations. The cost of this levee was about $1500 or $2000; was equally apportioned between the plantations of Airlie, Wilton and Melbourne, T. B. Rhodes, the proprietor of Airlie, assuming one third, John A. Buckner, the proprietor of Melbourne, assuming one-third, and witness, as manager of Wilton, on behalf of his constituents, assuming and paying the other one-third of the expenses therefor.

And at page 220:

Question by counsel for complainant—Have you or not, ever learned from your brother, F. M. Goodrich, Matt. F. Johnson, Oliver T. Morgan, or either of them, at any time, that Morganna plantation was bought in, in the name of F. M. Goodrich, or in the name of some one, for the use and benefit of Sparrow & Montgomery, attorneys, or either of them, or that Morganna was sold in settlement of their fees as attorneys for the succession of the heirs?

Witness says that he never heard that they bought it in at the sale. but *that the title was given them for a claim they held against the estate.* I have heard them say, when speaking of the sale, that it was a bona fide sale for services rendered, or a claim which they had against the estate. Witness says that he means that he has heard Matt. Johnson and Oliver Morgan say so.

C. M. Tilford testifies (Transcript, p. 191) that in February, 1873, he came to Wilton plantation as manager and agent for Matt. F. Johnson; and the contracts witness made with the laborers, were in the name of Matt. F. Johnson, tutor of the minor children of Julia Morgan. Witness had charge of Wilton and Albion plantations, in his aforesaid capacity, in 1873, 1874, 1875. Henry Goodrich was manager of the same plantations prior to his taking charge, and J. W. Erwin succeeded witness, acting in behalf of the same principals. Thinks Mr. Erwin still continues as manager and agent for Matt. F. Johnson, and the heirs of Julia Morgan.

John A. Buckner has not had possession of Wilton and Albion, since witness has known said plantations, which is since February, 1873. Buckner has exercised no control or management, or any of the rights of ownership over the said two plantations, to the knowledge of witness. * * * * *

Witness has known Melbourne plantation well, since 1872. John A. Buckner has had the management and control of Melbourne plantation, and exercised rights of ownership thereof, since witness has known it, until the present day. Witness is well acquainted with Wilton, Albion and Melbourne plantations, having managed Wilton and Albion for three years and having resided on Melbourne; from his relations with these plantations he has had a good opportunity to test their intrinsic value and productiveness as plantations.

There are about 3000 acres of cleared land on said three plantations They are three of the finest plantations in the Parish of East Carroll. Witness estimates the land on Wilton, Albion and Melbourne plantations at not less than thirty dollars per acre for the cleared lands. Witness communicated with John A. Buckner in 1876, with a view to purchase Melbourne plantation. Was willing to give $50,000 and Buckner asked $80,000 for Melbourne plantation.

Witness says that, in 1873, he received, as agent, the rent of Wilton and Albion plantations in cotton—the proceeds of which amounted to ten or fifteen dollars per acre. That, in 1874 and 1875, the rent received for the land was about ten dollars per acre. During the three years mentioned, the rents of Melbourne plantation were about the same per acre as that of Wilton and Albion. Since 1875 the rent per acre has averaged from eight to nine dollars per acre on all three of these plantations.

The annual rental of said plantation, since the year 1873, has been about fifteen thousand dollars net, down to the present time.

Witness says that John A. Buckner told him that he ought to have bought two or three hundred acres more of land, in addition to Melbourne plantation, in the division of the estate of O. J. Morgan, between himself and the heirs of Julia Morgan. *That he, Buckner, recognized the heirs of Julia Morgan as owners of Wilton and Albion plantations.* * * *

Witness understood that in the division with the heirs of Julia Morgan, John A. Buckner considered that he did not get the full amount coming to him as representing one of the heirships of Oliver J. Morgan's estate. Witness means to say that John A. Buckner considers that the heirs of Julia Morgan obtained by two or three hundred acres more of land in the division than they were entitled to out of the estate of Judge Morgan, he representing one heirship, and the heirs of Julia Morgan representing the other heirship.

Witness says that Oliver T Morgan, in the years 1872 and 1873, informed him, in conversation, that he, Oliver T. Morgan, was entitled individually, in the division of the estate, among the heirs, to some four hundred acres of land, and was complaining that he had not received the rent therefor. Witness says that, while he was in charge of the property, Oliver T. Morgan never received any of the rents, but they were always received and controlled by Col. Matt. F. Johnson.

That Oliver T. Morgan complained more than once about not receiving rents for the four hundred acres of land that he claimed he was entitled to *by the division among the heirs.*—(The heirs of Julia Morgan were her children by Oliver T. Morgan, her husband, who, it seems, claimed a portion of the estate in his own right, by inheritance from one of the children who died after Julia Morgan. Under Article 903, C. C., where one dies, leaving no descendants but a father or mother, and brothers and sisters, the succession is divided into two equal parts, one of which goes to the father or mother, and the other to the brothers and sisters. Oliver T. Morgan's claim was, that he was entitled in his own right to one-half of the property inherited by his deceased child from the mother, and that, notwithstanding the pretended sale of all the lands of the estate of Oliver J. Morgan, in January, 1869, these lands were to be divided among the heirs as if no such sale had been made, and that, in such division, he was entitled, in his own right, to four hundred acres. See, in this connection, the testimony of Henry Goodrich, Transcript, pp. 220-1).

Witness—Tilford—states (p. 193), that from the time he has known Wilton and Albion plantations, until the present day—(March 4th, 1878)—Col. Matt. F Johnson has controlled and disposed of the property, and exercised all the rights of ownership over it. That Mrs. Matt. F. Johnson and Mrs. George Johnson, are the sole surviving heirs of Mrs. Julia Morgan, wife of Oliver T. Morgan. * * That Col. Johnson complained that the rents for the property of Wilton and Albion had been small and unsatisfactory, prior to the time witness took charge as manager or agent for said Johnson. Thinks that Col. Matt. F. Johnson had been collecting the rents for Wilton and Albion, since the year 1869 or 1870. Don't know whether or not he collected the rents of said plantations prior to 1869. * * *

Witness says that Mr. Ferdinand M. Goodrich told him that only about thirty thousand dollars of the claims of the Morgan heirs against the United States Government for cotton, had been allowed by the Government. It is witness' impression that Col. Matt. F. Johnson collected this amount from the Government. but he does not know it to be a fact. See certified copy of Treasurer's draft to the order of Matt. F. Johnson, for $21,870 68, at page 287 of the Transcript.

J. W. Erwin, whose testimony was taken March 5th, 1878, says (Transcript, p. 194): Witness came to take charge of the Wilton and Albion plantations, on behalf of Matt. F. Johnson and the heirs of Julia Morgan, and in his capacity as agent and manager, has continued in charge of said plantations until the present day. Col. Matt. F. Johnson has exercised the rights of ownership over these plantations ever since witness has had control. Col. John A Buckner has not had the management or exercised right of ownership over these two plantations, since he has managed them, to witness' knowledge.

* * Witness since he has been there has collected the rents of these plantations for Col. Matt. F. Johnson and the heirs of Julia Morgan. In 1876, witness was renting some of the lands on Wilton and Albion plantations for ten dollars per

acre, some for eight dollars, and some for eighty pounds of lint cotton per acre.

That the appraisement of these lands at $2 75 per acre, and their sale for $3 00 per acre, was fraudulent and collusive, is not only conclusively established by the evidence already referred to, but is shown by the testimony of a number of other witnesses, as to the real value of the lands.

Cyrus A. Hedrick, Transcript, pp. 181, 183, was parish assessor, and assessed the open lands on Wilton, Albion and Melbourne, for purposes of taxation, in the years 1866 and 1867, at twenty-five dollars per acre, and thinks the same valuation was placed upon them in the tax rolls of 1868 and 1869. Witness says that Wilton, Albion and Melbourne are three of the largest and most valuable plantations in the parish of East Carroll; thinks that the lowest value of said plantations, since 1866, was not less than twenty-five dollars per acre, and that they are worth at the present time about fifty dollars per acre, and would not sell them at that price if he owned them. That said lands have rented since 1869 for about ten dollars per acre, the year 1869 included. * * Matt. F. Johnson is the husband of Narcissa Keene, the daughter of Julia Morgan, and the granddaughter of Oliver J. Morgan, and he is *the same Johnson, who is the reputed owner of Wilton and Albion plantations, since the sale in January, 1869*, during which time John A. Buckner has not occupied or cultivated said Wilton or Albion plantations to his knowledge, nor has said Buckner paid the taxes, leased the property, or done anything which would imply ownership of said plantations, to the knowledge of witness. * *

Since the year 1869, or, rather, the sale in January, 1869, the plantations of Wilton, Albion and Melbourne have been in a high state of cultivation, and large crops have been produced on them. * *

Witness says that Westland and the adjacent wild lands, belonging to the estate of O. J. Morgan, have possessed but seventy-five dollars per acre before the war, and twenty-five dollars now and since the war. Such lands have been renting for from eight to ten dollars per acre, since the war. Witness thinks that such lands could readily be rented at that price.

E. M. Devine, testifies, Trans. p. 199, that he rented 98 acres of Melbourne in 1866 at ten dollars per acre; that he rented 99 or 100 acres of Melbourne at ten dollars an acre in 1867 or 1868, he thinks in 1868, and that he rented from John A. Buckner, and paid him the rent. Witness planted about one hundred acres on Wilton in 1869 in copartnership with Matt F. Johnson and E. M. Sparrow; the contract of partnership was made about the 1st of February, 1869.—(the pretended adjudication of Milton, Albion and Melbourne to Buckner, was on the 19th of January, 1869, and the deed of Oliver T. Morgan, executor, to him is dated January, 23d, 1869, Trans. p. 108).—the arrangement being that each partner should incur one-third of the expense and receive one-third of the profits. Each partner received about thirty bales of cotton. The cotton was of very fine quality, being Peeler cotton. Witness sold his share at 27 cents per pound; Sparrow sold at 32 cents per pound, and witness does not know at what price Johnson sold.

Witness has not known Westland and the contiguous lands, adjudicated to J. W. Montgomery, agent, in 1869, to have been cultivated since the war, they having been overflowed annually. They are wild and abandoned lands, of very little value since the war, they having no intrinsic value, not being susceptible of cultivation. Would not estimate these land at more than one dollar and twenty-five cents per acre since the war. Has always regarded Melbourne plantation as being as valuable as any plantation in his knowledge, according to the number of acres; also regards Wilton and Albion as valuable plantations. Don't know of three plantations more valuable lying contiguous.

Thomas B. Rhodes testifies, Transcript, p. 184, that he has resided in the Parish of Carroll, now East Carroll, since 1866, and has been engaged in planting in the immediate neighborhood of Wilton plantation ever since that time, and now resides on a plantation contiguous to Melbourne. Has known quite well the plantations of Wilton, Albion and Melbourne ever since he has been in the parish, and they have always been considered among the finest plantations in the parish. That there are about 4000 acres of open land on said plantations. They are in a high state of cultivation, and have been renting readily at about ten dollars per acre. Witness would not estimate said lands lower than fifty dollars per acre, and if he owned them would not sell them because they command such high rent and are so exceedingly valuable. During the years 1866, 1867, 1868 and 1869, he never knew the lands to rent for less than ten dollars per acre. John A. Buckner had charge of Melbourne plantation in 1866. Witness knows that he leased a part thereof to Dr. E. M. Devine during that year; that Buckner has continued to control and manage, as owner, the Melbourne plantation, ever since the year 1866; that he has leased, sold in part, paid the taxes, and exercised every right of ownership over said plantation ever since 1863; that Oliver T. Morgan, executor, has never held corporeal possession of nor managed said Melbourne plantation to the knowledge of witness. If he had done so witness would have known it, as he lived in the immediate neighborhood on a contiguous plantation.

Witness states that the sale in January, 1869, produced no change of possession in regard to Melbourne plantation; that John A. Buckner exercised rights of ownership over it prior to the sale, and he continued to do likewise afterwards until the present time, and that he always held corporeal possession and management of said plantation ever since witness has known it in 1866.

That the said sale produced no change of possession or management of Wilton and Albion plantations; that they were under the control of Oliver T. Morgan, executor, and the heirs of Julia Morgan, prior to the sale of January, 1869, and they have continued to be under their control and management ever since said sale.

Dean, Adams and Gaffe cultivated, as lessees, Wilton and Albion, in 1866. Matt. F. Johnson and Samuel Chambliss cultivated said plantations in 1867. Does not know who leased the plantations in 1868, but knows that the laborers upon the places continued to cultivate them during that year, and that Oliver T. Morgan, Matt. F. Johnson and the heirs of Julia Morgan, were the ostensible owners, and disposed of them as they saw proper during the said years.

Witness says that, in the years 1869, 1870, 1871 and 1872, Henry Goodrich managed and controlled Wilton and Albion, as the agent and manager of these parties, to-wit: Oliver T. Morgan, Matt. F. Johnson and the heirs of Julia Morgan, and subsequently and until the present day they have controlled said plantations, through their agents, Claude M. Tilford and J. W. Erwin.

At pages 185-6, of the Transcript, this witness says: "*That on the morning of the sale of the succession property of Oliver J. Morgan, in January, 1869, he and John Lynch went to the Wilton plantation, where the sale was to occur, expecting to attend the sale, and Lynch was calculating upon buying some of the property. When they reached Wilton they found no person present authorized to make the sale. Passed above said plantation and met Judge J. W. Montgomery and Ferdinand M. Goodrich, attorneys, going down to the sale. Major Lynch spoke of going back to attend the sale, and questioned them as to the terms of the same.* MR. F. M. GOODRICH REPLIED TO HIM THAT IT WAS TO BE A SALE FOR THE BENEFIT OF THE HEIRS, OR A FAMILY AFFAIR. LYNCH WAS INFORMED THAT IF HE WENT BACK AND PURCHASED AT THE SALE, HE WOULD GET A LONG LITIGATION ON HIS HANDS, AND THEY INDUCED HIM NOT TO ATTEND THE SALE."

John A. Buckner being, and having been, for years in ac tual possession of Melbourne, and in the receipt and enjoyment of large rents and revenues from it, and Oliver T. Morgan and Matt. F. Johnson, for the heirs of Julia Morgan, being in actual possession of Wilton and Albion, and in the receipt and enjoyment of large rents and revenues from those places, on the 9th of December, 1868, a petition was filed in the Parish Court of the Parish of Carroll, transcript, pp. 37–8, on behalf of John A. Buckner, as natural tutor of his minor child, Mollie Buckner, and of Washington Jackson, Dudley and Nelson, and Ann B. Wilkins, all of the petitioners claiming to be creditors of the succession of Oliver J. Morgan, in which petition Oliver T. Morgan, as executor of the will of Oliver J. Morgan, intervenes and joins. This petition, upon averments that the succession of Oliver J. Morgan is indebted, in amounts not stated, to the petitioners claiming to be creditors, and others, and that the estate is possessed of landed property "*which is not yielding revenues*, and that the only means of paying the debts of said estate, is by a sale of the property thereof," prays that an inventory, appraisement and sale of the lands be made for that purpose.

This petition is signed by Sparrow & Montgomery, as attorneys for creditors, and by Ferd. M. Goodrich, as attorney for the executor.

Under the law of Louisiana, C. P. Art. 990, property of a succession, sold for cash to pay debts, must bring two-thirds of its appraised value. It therefore became necessary in furtherance of the purpose of the conspiracy to transfer the apparent title of all the valuable lands of the estate, in fraud of creditors, to the heirs and their attorneys, that a base and fraudulent appraisement of the lands should be procured to be made. What the real value of those lands was, and the difference between the value of the lands of Melbourne, Wilton and Albion and of Westland and the contiguous wild, overflowed and abandoned lands, is abundantly shown by the testimony, to which reference has already been made. None of the witnesses estimate the value of the former at less than twenty-five dollars per acre while those who appear best qualified to judge, value them at from fifty to seventy five dollars per acre, and all concur in testifying that their rental value was from eight to ten dollars per acre per annum.

On the other hand, none of the witnessses estimate the value of Westland and the contiguous lands at more than one dollar and twenty-five cents per acre. Montgomery himself testifies, in reference to this tract that, "He estimates the value of the land, on the day of sale, take it by and large, at one dollar and twenty five cents per acre, and so considered at the day he bought, and subsequently." Transcript, p. 236.

And yet two appraisers were found to estimate all of these lands, indiscriminately, at the uniform valuation of $2 75 per acre, and upon this appraisement as a basis, the pretended sale of all the lands was made on the 19th of January, 1869, at the uniform price of three dollars per acre, alike for the highly improved lands, shown to be worth from twenty-five to seventy-five dollars per acre, and for the overflowed, waste and abandoned lands, admitted not to be worth over one dollar and twenty five cents per acre.

Speaking of the base and fraudulent appraisement so procured to be made, the witness, J. S. Milliken (Transcript, p. 183) says, that he "knew Michael Gingery and W. D. Davis, having resided in the immediate neighborhood of those persons for many years; that Gingery was a notoriously feeble minded and ignorant man, and that the same remark is applicable to W. D. Davis; and that these are the persons who made the appraisement of the property belonging to the succession of Oliver J. Morgan, in December, 1868. Witness states that Mr. Gingery could not read or write or sign his name, except by making his mark; that Gingery and Davis were not men of good judgment, and no safe reliance could be placed on their estimate of the valuation of property. They were notoriously incompetent to make a just and fair appraisement of property like Wilton, Albion and Melbourne plantations. * * *

Witness thinks that the appraisement at two dollars and seventy-five cents per acre, made by Gingery and Davis, in December, 1868, looked more like a farce than a serious appraisement of those lands, because it did not approximate anywhere near their value."

W. S. Wyly testifies (Transcript, p. 100) that a document produced at the examination by him, was the original inventory filed in the succession of Oliver J. Morgan, in the Parish Court of the Parish of East Carroll, withdrawn by him under an order of court, and when questioned as to the signatures of the appraisers to the inventory, says: "I am acquainted with both of those appraisers. I have known them for many years in the Parish of Carroll. The signature of W. D. Davis, one of the appraisers, is his genuine signature. The purported signature of M. Gingery, is not correct. I have known him for many years, and I know, personally, that he is unable to read and write, having often seen him sign his name by his mark."

N. D. Ingram—Transcript, page 178—says that he "is well acquainted with W. D. Davis, formerly residing in the parish of Carroll, now West Carroll; that he, witness, does not consider Davis to be a man of strong intellect. He has the reputation of being somewhat of an idiot. His opinions are not much respected by his neighbors, owing to his weak mind. His mental weakness is notorious in the country. He is usually known by the name of 'Fool Davis.' Witness also knew Michael Gingery, who has recently died; was well acquainted with him. He was not a smart man, but not an idiot. He has known him as residing in the western portion of the parish of Carroll, now West Carroll, since the beginning of the war. Witness thinks Mr. Gingery was a man of very poor judgment."

C. A. Hedrich, the parish assessor, says—Transcript, page 183—that he was well acquainted with Michael Gingery and W. D. Davis, who appraised the property belonging to the succession of Oliver J. Morgan, in December, 1868. Gingery usually made his mark, and never knew him to sign his name otherwise; was a very illiterate and feeble-minded man. W. D. Davis was also a notoriously feeble-minded and ignorant man; was by occupation a brickmason; was generally known by the name of 'Fool Davis.' Witness says that these two persons, Gingery and Davis, were notoriously incompetent to fix a just valuation on river plantations. Thinks that competent men could have been found in the town of Floyd, or in any part of the parish of Carroll, without any difficulty, to appraise the property belonging to the succession of Oliver J. Morgan. Witness states that an appraisement of two dollars and seventy five cents an acre in December, 1868, for Wilton, Albion and Melbourne plantations, looks more like a farce than a serious appraisement of said lands, because they were readily renting at ten dollars per acre at that time.

After having procured this base and false appraisement of the lands of the estate of Oliver J. Morgan, by two feeble-minded and idiotic appraisers, and having had the lands of Morganna adjudicated to Goodrich, and those of Melbourne, Wilton and Albion to Buckner, for three dollars an acre, on the 19th of January, 1869, Goodrich and Buckner, apparently distrustful of the sufficiency of the paper titles executed to them by the executor, on the 23d of January, 1869, sought, on the 26th of that month, to have them patched up by process of monition. (Transcript, pp. 43, 45). Under the law of Louisiana, however, as will be shown, the process of monition extends only to the cure of irregularities or defects of form. It cannot cure a fraud nor give substance to a simulation.

The original bill in this cause was filed on the 24th of January, 1872. The final decree in the Circuit Court was not entered until the 18th of May, 1880. The bill was brought originally on behalf of the complainant and of all others, creditors of Oliver J. Morgan, deceased, who should come in and seek relief by, and contribute to, the expense of the suit.

During the period of more than eight years of protracted litigation, between the filing of the bill and the rendition of the final decree, no other creditor saw fit to come in to seek relief by the suit, and share the burthen of its prosecution, and the decree very justly limits, to the complainant in the cause, the relief which it awards.

THE FINAL DECREE

is to be found at page 354 of the Transcript. It adjudges that the estate of Oliver J. Morgan, deceased, herein represented by Matthew F. Johnson, dative executor of the last will of the said Oliver J. Morgan, is indebted to the estate of William Gay, herein represented by Stephenson Waters, Administrator, in the full amount, with interest and costs, claimed in the bill, and decrees that the sales of the lands of said estate of Oliver J. Morgan, adjudicated in parcels and sub-divisions, on the 19th of January, 1869, to John A. Buckner, J. West Montgomery, and Ferdinand M. Goodrich, respectively, and conveyed to them respectively by Oliver T. Morgan, executor, by notarial acts, passed before D. C. Jenkins, notary public, on the 23d of January, 1869, be declared null and void, as against the estate of said William Gay, complainant herein; and that all of the lands described in said notarial acts, together with all the buildings and improvements thereon, be seized and sold by the Marshal to satisfy the debt so due by the estate of said Oliver J. Morgan, to the estate of said William Gay, with interest and costs as aforesaid, according to law, and to the eighth equity rule relative to the execution of decrees for the payment of money.

APPLICATION FOR REHEARING.

The decree was signed on the 18th of May, 1880, and on the 20th of May, 1880, a petition for a rehearing was filed.

The grounds assigned in support of the application are, in substance:

1. That petitioners are advised, and believe, that the deeds executed by Oliver T. Morgan, executor, on the 23d of January,

1869, and annulled by the decree, are valid and operative, and confer a complete and perfect title against the heirs and administrator of William Gay.

2. That the proceedings in the Parish Court, in regard to the sales sought to be avoided, could not be inquired of in the Circuit Court, and were a bar to the bill and the prayer thereof.

3. That Ferdinand M. Goodrich, a defendant to the bill, died before the testimony in the cause had been taken; and that, before his death, he had sold and conveyed the property conveyed to him by Oliver T. Morgan, executor, to one Boyd, who owned and possessed the same at the death of said Goodrich, and that Barrow, administrator of the estate of Goodrich, disclaimed all connection with the property, and averred that he had no interest in or right thereto, and that the said decree annulling the deed to Goodrich, and ordering a sale of the property, is erroneous, and contrary to the rule and practice of the court.

4. That the decree, in providing that only a debt due the estate of William Gay be paid out of the proceeds of the sale ordered to be made, departs from the bill and the prayer of the bill, which was filed on behalf of all the creditors of the succession, and does not make any provision for equities manifest upon the proceedings, and that therein it is injurious to all parties connected with the case, and contrary to law and procedure of the court.

5. That the succession of Oliver J. Morgan was opened in the Parish Court of the parish of Carroll, about 1861, and that said Wm. Gay filed his claims in that court and was represented in the same, at and before the sale, *by independent counsel*; that all the matters of fact were known *to the attorneys of said Gay;* and that more than one year elapsed after all this before the bill was filed. The petitioners aver that the Circuit Court has no jurisdiction to revise, review, set aside or annul the orders and

decrees of the Parish Court, and that the decree, in so far as it affects those orders, is improvidently made.

The application for rehearing came on to be heard on the 24th of May, 1880, and was refused with costs. Transcript, page 356. And thereupon this appeal was taken.

ARGUMENT.

The foregoing statement and references to evidence in the Transcript to sustain it, disclose a case of fraud and spoliation by defendants, to the wrong and injury of complainant, so flagrant as to render it unnecessary to address to this Court any argument to show that, unless debarred therefrom upon technical grounds, complainant is entitled to the full measure of relief prayed for by the bill and awarded by the decree of the Circuit Court. Upon the merits, the case is too plain to admit of argument. It only remains to be demonstrated that none of the technical defences interposed on behalf of defendants can protect them in the enjoyment of the fruits of their fraud and spoliation.

I.

Apart from the merits of the cause, as to which no defence is made at all, it is strenuously objected, on behalf of defendants, that the Federal Courts are without jurisdiction to entertain the bill. In disregard of the maxim, *non valet exceptio ejusdem rei cujus petitur dissolutio*, the proceedings and decrees of the State Courts, which are attacked upon averments of collusion, simulation and fraud attending them, are pleaded in bar to the bill, as "judgments of courts of competent jurisdiction, having entire control over the subject"—and it is contended that the Federal Courts "ought not to take cognizance of a bill for the impeachment of said orders and decrees, but that the plaintiff should be required to present his objections in the same court where the same were rendered"—Transcript, p. 29—and that the Federal Courts are without jurisdiction "to revise, review, set aside or annul" the said orders and decrees, and that the decree of the Circuit Court, in so far as it affects those orders, was improvidently made. Transcript, p. 356.

The bill exhibited in this cause is *not* a bill to review or revise proceedings or decrees of State Courts for alleged error, irregularity or informality therein. It is distinctly a bill to avoid, upon averments of collusion, simulation and fraud, certain sales alleged to have been under orders and decrees of a State Court. Of such a bill, brought on behalf of a citizen of Kentucky, on the equity side of a Circuit Court of the United States, sitting in Louisiana, against citizens of that State, that court certainly had jurisdiction.

In *Barrow* vs. *Hunton*, 99 U. S. 82 the question presented, with regard to the jurisdiction of the Circuit Court was, whether the proceeding in that case, to procure the nullity of the judgment of a State Court, was or was not in its nature, a separate suit; or whether it was a supplementary proceeding so connected with the original suit as to form an incident to it, and substantially a continuation of it. "If," said the court, "the proceeding is merely tantamount to the common law practice of moving to set aside a judgment for irregularity, or to a writ of error, or to a bill of review, or to an appeal, it would belong to the latter category, and the United States Court could not properly entertain jurisdiction of the case. Otherwise the Circuit Courts of the United States would become invested with power to control the proceedings in the State Courts, or would have an appellate jurisdiction over them in all cases where the parties are citizens of different States. Such a result would be totally inadmissible.

On the other hand, if the proceedings are *tantamount to a bill in equity to set aside a decree for fraud*, in the obtaining thereof, then they constitute an original and independent proceeding, and, according to the doctrine laid down in *Gaines* vs. *Fuentes* (92 U. S. 10), the case might be within the cognizance of the

Federal Courts. The distinction between the two classes of cases may be somewhat nice, but it may be affirmed to exist. In the one class there would be a mere revision of errors and irregularities, or of the legality and correctness of the judgments and decrees of the State Courts; and in the other class the investigation of a new case arising upon new facts, although having relation to the validity of an actual judgment or decree, or to the party's right to claim any benefit by reason thereof."

In *Gaines* vs. *Fuentes*, 92 U. S. 20, the court said of that suit, that it was, "in all essential particulars, a suit for equitable relief—to cancel an instrument alleged to be void, and to restrain the enforcement of a decree alleged to have been obtained upon false and insufficient testimony. There are no separate equity courts in Louisiana, and suits for the special relief here sought, are not there designated suits in equity. But they are none the less essentially such suits; and if by the law obtaining in the State, customary or statutory, they can be maintained in a State Court, whatever designation that court may bear, we think they may be maintained by original process in a Federal Court, where the parties are on the one side, citizens of Louisiana, and on the other, citizens of other States."

Where property of a succession has been fraudulently aliened by an executor or administrator, relief, under the practice of the State Courts of Louisiana, is to be sought, *not in the Court of Probate, where the estate was administered, but in the courts of ordinary jurisdiction.*

Thus, in *Casanova* vs. *Acosta*, 1 La. R. 183, it was held that, where property belonging to a succession has passed into the hands of third persons, the courts of ordinary jurisdiction and not those of probate, must be resorted to.

In *Trichel* vs. *Bordelon*, 9 R. 191, suit was brought in the Court of Probates to annul proceedings and decrees *of that court*, and sales under them, for alleged collusion and fraud between the parties, and there was an exception or plea to the jurisdiction, on the ground that the suit should have been brought, not in the Probate Court, where the proceedings were had and the decrees rendered, but in the courts of ordinary jurisdiction This plea was overruled by the Judge of the Probate Court. The Supreme Court, reversing the decision, said: "It appears to us the Judge erred in overruling the plea to the jurisdiction of the court. * * * The object of this suit is to set aside a judgment obtained by fraud and collusion, which, in the case of *Fennesy* vs. *Gonsoulin*, 11 La. 419, this court held to be a revocatory action. That it is so, is clear from an examination of the allegations and prayer of the petition. The case of *Clark* vs. *Christine et als.*, 12 La. 394, is very similar to this. It was identical, until the plaintiff withdrew that portion of her prayer, which asked that the sheriff's sale made on the execution should be annulled.

The court, in that case, held, that the Probate Court was without jurisdiction, and that the case must be investigated in the District Court, where it was subsequently instituted and tried.

The articles of the Code of Practice, 604 to 613, which speak of and authorize the action of nullity, seem to us to confine it to the parties to the judgment, and to confine them to the court in which they have been litigating previously; *but when a creditor seeks to annul or revoke the proceedings, he must proceed in the ordinary form.*"

In *Choppin* vs. *Forstall*, 28 A. 303, the plaintiffs alleged that, for certain purposes stated, E. J. F. & Co. caused mortuary proceedings to be had in the succession of Choppin, which were averred to be collusive and fraudulent, and obtained a decree for the sale of two certain plantations; and that under such decree a simulated and fraudulent sale of the property was made by the sheriff to E. J. F. & Co., and that under the said sale the defendants, after the death of E. J. F., took possession of one of said plantations, and, by a fraudulent and simulated notarial act, transferred it to the succession of E. J. F.; and they prayed that the sheriff's sale to E. J. F. & Co., and the notarial transfer to the succession of E. J. F., of one of the plantations, should be annulled as simulated and fraudulent, and the property be subjected to their alleged rights.

The suit was brought in the *District* Court, a court of ordinary general jurisdiction, and, among other exceptions interposed by the defendants, was one that the District Court was "incompetent, *ratione materiæ*, to pass upon and decide the issues presented in the petition, because it *seeks the avoidance of acts performed under the decrees of another tribunal.*" The District Court *sustained* the exception, and dismissed the case for want of jurisdiction. The Supreme Court, reversing the decision, said: "We think the Court erred. The action is one to recover property, and the value being sufficient, the District Court has jurisdiction, under the constitution and laws now in force. In determining the validity of the sales in question, that tribunal has power to say *whether or not the alleged proceedings in the Probate Court are valid, without formally annulling or sustaining the said judicial proceeedings. All that the plaintiffs ask in this respect is the annulment of the sales, and to have this done it is not necessary, as contended by defendants, to obtain a judgment annulling the judicial proceedings and decrees resulting in the sale of the property.*"

The jurisdiction of Courts of Equity, under the common law and equity system of administrative justice, to afford relief in cases analogous to those just referred to, where, under the State practice in Louisiana, recourse is to be had to courts of ordinary general jurisdiction, is too clear to be controverted, and the equity jurisdiction which attaches in cases of this character is *original* and not *ancillary*. It is in no wise necessary that there should be a prior judgment at law to sustain it. An executor is a trustee; and collusive and fraudulent purchasers of trust estates are also held to account in equity, *as trustees*, for creditors and others beneficially interested in the trust estate.

The authority of chancery over executors, to enforce the execution of their trusts, is one of the most ancient heads of original equity jurisdiction. As long ago as the reign of Henry VII, the right to hold unfaithful executors to account in this world and the next, was asserted with an emphasis and asperity rather shocking to ears accustomed only to the amenities of modern juridical utterances.

In the Year Book, 4 Hen. vii, C. 4, Archbishop Morton Lord Chancellor, is reported to have said: "I known very well that every law should be consistent with the law of God; and that law forbids that an executor should indulge any disposition he may have to waste the goods of the testator; and if he does, and does not make amends if he is able, he shall be damned in hell."

The right of a creditor to pursue property of an estate fraudulently aliened by an executor, does not appear to have been ever, at any time, questioned in Chancery.

In Story's Equity Jurisprudence, § 424, it is said that "it seems at one time to have been thought that no person *but a creditor*, or a specific legatee, could question the validity of the disposition of the assets made by an executor, however fraudulent it might be. * * * It is now well understood that pecuniary and residuary legatees may question the validity of such disposition"

And in Perry on Trusts, § 810: "Where property is sold for *a nominal price only, or at a fraudulent undervaluation*, or the purchaser knows that the executor intends to misapply the money, and the sale is made for that purpose, and in all such cases, where there is fraud or suspicion of fraud, the transaction may be investigated, and impeached by creditors, or by specific, pecuniary or residuary legatees, if they are injured in their rights."

In *Scott* vs. *Tyler*, 2 Dickens, 725, LORD THURLOW said:

"It is of great consequence that no rule should be laid down here which may impede executors in their administration, or render their administration of the testator's effects unsafe or uncertain to the purchaser. * * But fraud and covin will vitiate any transaction and turn it to a mere color. If one concerts with an executor by obtaining the testator's effects at a nominal price, or fraudulent undervaluation, or by applying the real value, for the purchase of other subjects for his own behoof, or in extinguishing the private debts of the executor, such conduct will involve the seeming purchaser and make him liable for the full value."

An account of an administrator, though settled by a decree of a court of competent jurisdiction, may be opened for fraud by bill in a Federal Court. Mallet vs. Dental, 1 Curtis, 181.

One bill, to set aside several sales to different persons, by an administrator, made by collusion with the purchasers, will lie. Story's Equ. Pl., sec. 539 a.; 34 Miss. 87; 29 Mo. 350.

In *Pratt* vs. *Northam*, 5 Mason, 95, it was held by MR. JUSTICE STORY that the courts of the United States, as courts of equity, possess jurisdiction to maintain suits in favor of legatees and distributees for their portions of the estate of the deceased, and that the settlement of an administrator's account and a judgment of a State Court of Probates, where procured by fraud, are no bar to such jurisdiction.

STORY, J. "The first objection taken is, to the jurisdiction of the court, as a court of equity, to entertain the suit, for two reasons. The first is, that the plaintiffs have, if entitled to any, a complete remedy at law. * * * The second is, that by the law of Rhode Island the decree of a *quietus* operates as a final and conclusive bar to any further proceedings. * * * The last reason is founded on the 25th section of the act respecting intestate estates, which enacts 'that the settlement of the accounts of any executor, administrator, or guardian by the Court of Probate, or, in case of appeal, by the Supreme Court of Probate, shall be final and conclusive upon all parties concerned therein, and shall not be subject to re-examination in any way or manner whatsoever.'

"This language cannot be considered as giving any higher or stronger efficiency to a probate decree than a judgment possesses at the common law.

"Upon general principles, fraud avoids the latter, and the same doctrine has been uniformly applied to all instruments and proceedings, however solemn."

In *Michoud* vs. *Girod*, 4 How. 503, a bill in equity was filed, in the Circuit Court of the United States for the Eastern District of Louisiana, by some of the heirs and legatees of Claude Francois Girod, against a number of persons, in possession of property of the estate, and claiming title thereto, under sales thereof made by order of the Probate Court, at the instance of the testamentary executors. The bill was to avoid the proceedings and judgments of the Probate Court, and the sales thereunder, through which the defendants claimed title, and to recover the respective shares of the complainants in the estate.

The Supreme Court, being satisfied that the proceeding and decrees of the Court of Probate complained of in the bill, were the result of collusion and fraud, as charged, had no hesitation in setting them and the sales made under them, aside, and accorded to the complainants the relief sought by the bill—p. 562.

Again, in *Gaines* vs. *Hennen*, 24 How. 553, the complainant, by bill in equity, claimed as legatee, certain property of the testator's estate which had passed into the possession of the defendants, who claimed title thereto, through mesne conveyances from sales thereof, made under decree of the Court of Probate at the instance of executors.

At p. 565 the court said: "Several immaterial or formal points were made in the argument to defeat the claims set out in the bill. Such as that the case was not one for equity jurisdiction, but was *ratione materiæ* exclusively cognizable before the Probate Court of New Orleans. * * Again, that the probate proceedings in the Second District Court of New Orleans *are yet pending and undetermined,* and on that account that the said court has exclusive jurisdiction over the estate of Daniel Clark. We have examined these formal objections and found them unsustained by the cases cited in support of them."

We have already shown that, in Louisiana, relief will be afforded, in courts of ordinary jurisdiction against proceedings and judgments of Courts Probate, where affected by fraud and collusion, as charged against the proceedings complained of in the bill in this case. Were it otherwise, however, the *equity jurisdiction of the Federal Courts* would still be adequate to afford relief, in cases where it had jurisdiction of the suits by reason of the *citizenship of the parties.* The equity jurisdiction of the courts of the United States is not affected, nor its remedies limited, by State practice or legislation. It is the same in all the States, and is co-extensive with the jurisdiction of the High Court of Chancery, as it existed in England at the time of the adoption of the Federal Constitution.

Payne vs. *Hook*, 7 Wall, 425, and cases there cited. *Dupuy* vs. *Bemiss*, 2 A. 509.

In *Payne* vs. *Hook*, the Supreme Court said: "The jurisdiction of the Circuit Court of Missouri, to hear this cause, is denied, because in that State exclusive jurisdiction over all disputes concerning the accounts or duties of administrators until final settlement, is given to the local county court, which is the Court of Probate; and as the administration complained of *is still in progress* in the county court of Calloway county, resort must be had to that court to correct the errors and frauds in the accounts of the administrator.

"The theory of the position is this, that a Federal court of chancery, sitting in Missouri, will not enforce demands against an administrator or executor, if the court of the State having general chancery powers could not enforce similar demands. In other words, as the complainant, were she a citizen of Missouri, could obtain a redress of her grievances only through the local court of probate, she has no better or different rights because she happens to be a citizen of Virginia.

"If this position could be maintained, an important part of the jurisdiction conferred on the Federal courts by the Constitution and the laws of congress, would be abrogated. As a citizen of one State has the constitutional right to sue a citizen of another State in the courts of the United States, instead of resorting to a State tribunal, of what value would that right be, if the court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress? But this objection to the jurisdiction of the Federal tribunals has heretofore been presented to this court, and overruled."

In Hagan vs. Walker, 14 How. 29, a case in which the able counsel who is concerned for the defendants in this cause was engaged, this court held: "That equity has *original* jurisdiction of a bill against an administrator, and one to whom property of a decedent has been conveyed in fraud of creditors, to subject such property to the payment of complainant's debt. And that being the exercise of *original* jurisdiction, and not of *auxiliary* jurisdiction, it is not necessary that the creditor should be in a condition to levy an execution should the fraudulent obstacle be removed."

Although it is a matter of no importance as affecting the jurisdiction of this court, yet the acknowledgment of the debt by the executor and the ranking it among the debts of the succession by the judge of probate, is tantamount to a judgment upon confession of that court. C. P., 983, 984, 985, 986.

In the bill, as originally filed, it is stated that, prior to the filing of the bill, to-wit: on the 23d of December, 1870, complainant had obtained judgment on the law side of the Circuit Court in which the bill was filed, upon the drafts described in the bill.

After the filing of the bill in this cause to avoid the collusive and fraudulent sales of the 19th of January, 1869, of all the lands of the estate of Oliver J. Morgan and to subject them to the payment of complainant's debt, defendant's counsel sued out a and prosecuted a writ of error to the judgment at law upon the drafts, and the judgment was reversed and the case remanded, with leave to the plaintiff to amend his pleading, for the reason that the petition in the suit did not aver the citizenship of the original payees or subsequent endorsers of the bills, and that, therefore, the jurisdiction of the Circuit Court had not been made to appear affirmatively on the record. Morgan's Executor vs. Gay, 19 Wall. 82.

As the jurisdiction of the court over this cause is original and not ancillary, the reversal of the prior judgment at law was of no avail to defeat the jurisdiction in equity, the purpose it is presumed for which the writ of error was sued out.

But even if a prior judgment were necessary to support the bill, there was such a judgment in the State Court prior to the institution of the suit in the Circuit Court, a judgment by confession, and the only judgment possibly obtainable against the succession of Oliver J. Morgan, by a creditor whose claim was acknowledged upon presentation to the executor.

In the answer of the executor, Transcript, p. 67, it is stated that complainant's "claim had been acknowledged as a valid and just debt against the succession, as will appear by the acknowledgment thereof by this respondent on the original claim." And see the order of E D. Farrar, Judge of Thirteenth District, at pp. 276, 273, 279 of this transcript, ordering the drafts to be recognized among the acknowledged debts of the succession.

Art. 984 of the Louisiana Code of Practice, declares that "no bearer of a claim of money against a succession administered by a curator appointed by a judge or by a testamentary executor shall commence an action against such succession before presenting his claim to the curator or executor.

Art. 985: If such claim be liquidated and be acknowledged by the curator or testamentary executor or administrator, he shall write on the evidence of the claim, or on a paper which he shall annex to it, a declaration signed by him, and stating that he has no objection to the payment of the claim, after which the bearer of such claim shall submit it to the judge, that it may be ranked among the acknowledged debts of the succession."

The order of the court ranking a claim against a succession, acknowledged by an executor, among the debts of the succession, is certainly a judgment by confession, and the only judgment which can be obtained where the claim is not contested, and there was such a judgment of record establishing the claim of Wm. Gay against the succession of Oliver J. Morgan, prior to the filing of the bill. 21 A. 44.

After the reversal by this court of the judgment at law of the Circuit Court in favor of William Gay, against the succession of Oliver J. Morgan, mentioned in the bill as originally exhibited, a supplemental answer in this cause was filed by the defendants, setting forth the fact of such reversal; and in said supplemental answer, the defendants furthermore " plead that the prescription of five years is applicable to the bills of exchange described in the suit, and that the said action on the same is barred by the prescription of five years, and they plead the same to any suit thereon, and that the debt specified in this bill is barred and liberated by the prescription aforesaid."

The jurisdiction of the Circuit Court over this cause, as has been seen, is original and not ancillary, and it was, therefore, not necessary to aver and show a prior judgment at law, to sustain the jurisdiction. Out of abundant caution, however, after the reversal of the judgment at law of the Circuit Court, and the filing of the supplemental answer setting up the fact, the bill of complaint was, with leave of court, amended, so as to set forth the prior judgment of the State Court of Probates, whereby the claim of complainant had been judicially recognized and ranked as an acknowledged debt of the succession of Oliver J. Morgan. (Transcript, 353). By the acknowledgment of the executor, and the judicial recognition of the debt by the State Court, the original debt upon the bills of exchange was merged in the judgment of the court, recognizing the claim as a debt of the succession. The existence of the judgment of the State Court, set up by the amendment permitted to be made to the bill, ought to be sufficient to place the jurisdiction of the Circuit Court over this cause beyond question.

In *Bean* vs. *Smith*, 2 Mason 968, MR. JUSTICE STORY said: The present suit is not brought upon any bills of exchange, but at most upon a judgment rendered in favor of the plaintiff against *Simon Smith*, one of the defendants, upon certain protested bills of exchange, endorsed by *Simon Smith*, in the State Court of Rhode Island. The chose in action has, therefore, passed in *rem judicatam*, and so far as *Simon Smith* is concerned, is absorbed and extinguished by the judgment. The claim of the plaintiff is not now in virtue of any assignment, but of a direct judgment in his favor, and if the suit were now at law upon the judgment itself, there cannot be a doubt of the jurisdiction of this Court to sustain it. In deciding upon its jurisdiction the Court can only look to the immediate ground work of the suit, not to any remote or collateral consideration in which it had its origin. It is no objection to the jurisdiction, that at some anterior period the transaction assumed a shape not within the reach of this jurisdiction. It is sufficient if it has now become so modified by the act of the parties, or by the principles of law, that jurisdiction rightfully attaches.

Taking, then, the case in the most favorable view for the argument of defendant's counsel, it is a suit upon a judgment between citizens of different States, and does not fall within the statute prohibition. But in truth, the suit is not, strictly speaking, founded upon a judgment. The judgment is collateral. It forms an ingredient, an essential ingredient, in the case; but it is not the whole of the case. The plaintiff seeks for relief against fraudulent conveyances of property, executed by the defendant, *Simon Smith*, to the other co-defendants, for the alleged purpose of defeating the plaintiff of his just rights as a creditor under the judgment. It is these fraudulent conveyances which constitute the immediate ground-work of the suit, and so far as respects all the defendants, except *Simon Smith*, the sole groundwork of the suit. They were never liable either upon the original bills or judgment, nor had the plaintiff any claim against them, in his mere character as assignee.

If they are liable to him at all, it is because they are parties to a meditated fraud to his injury, or as trustees holding property for his use. His right to sue them is not a right which once vested in another person, and has passed to him by assignment. It is a right which originally sprung up after the assignment to him, and from new transactions, and the same observations apply, with equal force, to *Simon Smith*. It is not his liability to the plaintiff under the original assignment of the bills of exchange endorsed by *Simon Smith*, that is now in question, and is now sought to be enforced; but a new right collateral to that, growing out of a direct judgment between the parties, and an asserted fraud injurious to the plaintiff, which has been devised to avoid the satisfaction of their judgment. It is perfectly clear that the statute (the 11th Sec. of the Judiciary Act of 1789, ch. 20), never contemplated an exclusion of jurisdiction in cases where a mere negotiable instrument was mixed up in the ingredients of the case; but where that chose in action constituted the sole cause of action, and the assignment constituted the whole ground of the plaintiff's right. I have no difficulty, therefore, in overruling this objection to the jurisdiction of the court." * *

Upon the foregoing authorities, we respectfully submit, that there is no doubt as to the jurisdiction of the Circuit Court, and of this court over this cause. If we have gone at so great length into the discussion of the case in this respect, it is not so much on account of the intrinsic difficulty of the question of jurisdiction, as of the stress laid upon it by the eminent counsel for the defendants, at one time an associate Justice of this court.

II.

There is nothing in the pleas of prescription interposed by the defendants to screen them from accountability for the frauds and spoliations with which they are charged in the bill.

If the prescription applicable to revocatory actions brought against the debtor, to set aside transfers of his property made in fraud of his creditors, was applicable in any case, which is not admitted, to fraudulent transfers by a trustee of trust property, still the plea would not avail the defendants in this case.

Mr. JUSTICE STORY, in his work on Equity Jurisprudence, sec. 1520, says: "It is often suggested that lapse of time constitutes no bar in cases of trust. But this proposition must be received with its appropriate qualifications. As long as the relation of trustee and *cestui que* trust is acknowledged to exist between the parties, and the trust is continued, *lapse of time can constitute no bar to an account or other proper relief for the cestui que trust.*"

And the Supreme Court of the United States, in Sullivan vs. R. R. Co., 4 Otto and 11, says: "Every case is governed by its own circumstances. Sometimes the analogy of the statute of limitations is applied; *sometimes a longer period than that re-*

quired by the statute is required; and sometimes the rule is applied when there is no statutable bar. It is competent for the court to apply its own inherent principles of jurisprudence and decide accordingly."

It is clear, therefore, that the Federal Courts sitting in equity, are not to be held rigidly bound by State statutes limiting the time within which relief may be sought by suit in the State Courts. But if this court were so bound by those statutes still it would not avail the defendants.

The obligation of an executor to account for the administration of his trust, and for the trust property, it has been held by the State Courts of Louisiana, gives rise to an action which is one of mandate, and is only prescribed by ten or twenty years. C. C. 3508; Wilson vs. McGrain, 12 A. 357; Deranco vs. Montgomery, executor, 13 A. 513.

But, furthermore, the evidence conclusively shows that the sales attacked were not only fraudulent, but were bald *simulations*, not followed by any change of possession or the payment of any price. It is not pretended that Montgomery paid anything for, or ever took possession of, the lands which it was pretended were adjudicated to him as agent of the ordinary creditors of the succession. He had no authority from the creditors to make any such purchase, and none of them have ratified it. Buckner himself testifies that he has never paid for the lands adjudicated to him, and that no change of possession whatever followed such adjudication; that he is not now and never has been in possession of most of the lands pretended to have been sold to him. As to the lands which it was pretended were sold to Goodrich, it is shown that the only consideration given for them was the professional service of Montgomery in concocting and consummating the spoliation; that though the title was taken in the name of Goodrich it was for Montgomery's benefit, and that the lands afterwards went to satisfy a debt due by Montgomery to the firm of Johnson & Goodrich.

Nor did the pretended mortgages in favor of Julia Morgan, wife of Oliver T. Morgan, the executor, and of the minor, Oliver Kellum, the daughter and the great grandson of Oliver J. Morgan, have any existence At the time of the sale to him of their interest in the community property inherited by them from his wife, he was not the tutor of either of them.

The sale was made on the 18th of January, 1858; and, as it was made for cash, no mortgage could have been or was retained in the sheriff's deed to secure the payment of the price. The amount due respectively to Julia Morgan and to the minor, Kellum, was permitted to remain in the hands of Oliver J. Morgan, and he became their ordinary debtor therefor. No conventional mortgage was retained, because the sale was for cash; and there is no law under which any legal or a tacit mortgage attached to secure the payment of the money thus left in his hands. The pretense, therefore, that the succession of Julia Morgan, and the minor, Kellum, were privileged mortgage creditors of the succession of Oliver J. Morgan to an extent sufficient to absorb all of the assets of that vast estate, or to any extent whatever, was, itself, as much of a sham and a simulation as the fraudulent and simulated sales made upon the pretext of satisfying such pretended privileged and mortgage debts. Such shams cannot be covered, and given the force and effect of realities, by the prescription of one year against the revocatory action. An action to have them declared simulations is only barred by the prescription of article 3508, or of ten years. 1 A. 132, 262; 3 A. 627; 4 A. 36; 5 A. 400; 8 A. 83, 453; 10 A. 20; 11 A. 265

Nor is the prescription of five years, which is pleaded against the drafts described in the bill, any more tenable. These drafts all matured in January, 1861. Mr. Gay, the holder of them, was a citizen of Kentucky, and the parties liable upon them were citizens of Louisiana. According to the rule laid down by the Supreme Court of the United States in the case of the Protector, 12 Wall. 702, and approved in Bird, Executor, vs. La. State Bank, 3 Otto, 98, the period from the 27th of April, 1861, to the 2d of April, 1866, must be excluded in computing the time necessary for prescription to attach. In April, 1866, prescription upon these drafts was interrupted by the only species of judicial demand that could be made under the provisions of articles 983, *et seq.* of the Code of Practice, when the debt was acknowledged by the executor, and ranked by the judge as a debt of the succession of Oliver J. Morgan. The action at law upon the drafts in this court, was brought in 1870, and continued to be pending here until the year 1877, long subsequent to the institution of the present suit. Whether this court had jurisdiction of the action at law or not, *is altogether immaterial*, in so far as the effect of that action to interrupt prescription is concerned. It is textually so provided by article C. C. 3518 (3484). Neither the want of jurisdiction nor error in the form of action, nor the rejection of the demand by final judgment, avoids the interruption of prescription by judicial demand. Burk vs. Decuir, 11 A. 503.

The drafts were all acknowledged as just claims against the succession of Oliver J. Morgan, by the executor, Oliver T. Morgan, on the 3d of April, 1866, and judicially recognized and ranked as such by the Judge of the Thirteenth Judicial District, on the 5th of April, 1866. Transcript, pages 276, 273, 279.

The bill in this cause was filed on the 24th of January, 1872. Transcript, page 1.

The Supreme Court of Louisiana, in the *Succession of Romero*, 29 A. 493, *held* that a debt of a succession, evidence by a negotiable note, to which generally the prescription of five years is applicable, when once acknowledged by the administrator, is prescriptible only in ten years thereafter; and in the *Succession of Mansion*, 34 A. 1246, and other recent cases, the same court has held that such acknowledgment has the effect of keeping the claim alive and suspending prescription during the entire pendency of the administration.

In *Renshaw* vs. *Stafford*, 30. A. 853, the plaintiff was the holder of promissory notes of L. A. Stafford, maturing in 1861, after whose death the notes were presented in 1865 to his executor, and by him duly acknowledged as just claims against the estate. The notes were secured by mortgage on a certain plantation of the decedent, and on the 16th of May, 1876, *more than ten years* after the acknowledgment of the claim by the executor, suit was brought to enforce the notes and mortgage and to avoid certain sales which had been made of the property of the succession. The executor and the purchaser of the property, who was made a defendant, pleaded the prescription of five years, applicable to promissory notes, and the prescription of ten years, applicable to personal actions generally, in bar to the suit.

The Court said: "We premise by stating that we do not consider the question any longer as an open one, as to the five year prescription. It does not apply to a case like this." And here the Court cites 29 A. 495, the *Succession of Romero*, just quoted.

"We propose, therefore," the Court goes on, "to discuss the following questions:

First—Is the claim of plaintiff barred by the prescription of ten years? and,

Second—If so, from what date or event does that prescription begin to run?

It may, we think, be conceded that the prescription of ten years is applicable to this debt, for it is one of that class denominated personal actions, which finds its prescription in the rule of article 3544, C. C. * *

We think the following proposition may be accepted as fundamental:

That an administrator or dative executor is an officer of the court, and primarily the representative of the creditors of the estate. The effect of an administration is to take the property

Gaines vs. *Hennen*, 24 How. 554, was a case of a complainant in a bill in equity claiming as legatee under an alleged will, property of the testator from the defendant, who was in possession, and claimed to derive title thereto through mesne conveyances from a probate sale; and among the grounds of defense relied on were, that the defendant, and those under whom he claimed, were purchasers for a valuable consideration without notice, and that the right of action, if any ever existed, was barred by prescription.

The court, p. 569, said: "After the interruption of the prescription by the filing of the bill by complainant, the defendants could no longer claim to be in possession *in good faith*, as that is defined by the Civil Code. In article 3415, the possessor in bad faith is he who possesses as master, but who assumes this quality when he well knows that he has no title to the thing, *or that his title is vicious or defective.* The possessor must not only not be in bad faith, but in the positive belief that he is the true owner, and, *if he doubts the validity* of his title, his possession is not the basis of prescription. Troplong, Prescription, Vol. 2, p. 451, No. 927; Ib. p. 444, No. 918; Ib. p. 442, No 915. The plea of prescription is not available in this case."

And in *Gaines* vs. *Delacroix*, 6 Wall. 720, which was likewise a case where complainant, by bill in equity, sought to recover, as legatee under a will, property in possession of defendant, claiming to derive title thereto from a probate sale, the court said: "It is contended by Delacroix that his titles derived from the purchases from Relf are valid, because he purchased within the year, while the functions of the executors were in full force. This is true, if he purchased in good faith, and the requisites of the law on the subject of the sales o[illegible]ccession property were complied with. * * * It may b[illegible] effect of the sale, under the circumstances, would confer [illegible] title, if the purchaser bought in good faith; but Delacroi[illegible]e property in bad faith, and the vice of his title cannot [illegible]d, even if the sale were in all respects regular; nor can the plea of prescription help it."

In *Michoud* vs. *Girod*, 4 How. 503, already referred to, a bill was filed against parties in possession of property of the testator's estate, who claimed title thereto, under certain proceedings, judgments and sales of the Probate Court, which the bill sought to have avoided for fraud The proceedings, judgments and sales complained of occurred in 1814, 1815 and 1817, and the bill to avoid them and recover the property was not filed until in or *after the year 1840*.

The defendants relied upon prescription as a defense, Nicholas Girod having purchased and possessed the estates mentioned in the bill since 1814.

The court said, p. 553: " * * An executor or administrator is in equity a *trustee* for heirs, legatees and creditors." * * And at page 560: " * * Nor do we think the complainants have lost their rights by negligence or by the lapse of time. * * In a case of actual fraud, courts of equity give relief after a long lapse of time, much longer than has elapsed in this instance, since the executors purchased the testator's estate. In general, lapse of time is no bar to a trust clearly established to have once existed; and where fraud is imputed and proved, length of time ought not to exclude relief. * * * Still, within what time a constructive trust will be barred must depend upon the circumstances of the cases. * * * There is no rule in equity which excludes the consideration of circumstances, and in a case of actual fraud, we believe no case can be found in the books, in which a court of equity has refused to give relief within the lifetime of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or become known to the party whose rights are affected by it"

III.

Nor can the judgments of the State Courts in the monition suits of Buckner and Goodrich, relied upon to validate the collusive and fraudulent sales to them, have any such effect.

In *Jackson* vs. *Ludeling*, 21 Wallace, 616, a case of much celebrity, this court had occasion to consider the effect of judgments in proceedings by way of monition under the law of Louisiana.

The counsel for defendants in this case was the leading counsel for complainants in that case, in which a bill was brought in the Circuit Court of the United States for the District of Louisiana to avoid, upon averments of collusion and fraud, a judicial sale of a railroad made under the orders of a State Court, and to which bill one of the defenses relied upon by the defendants was a judgment of homologation in a suit of monition, similar in all respects to the judgments now set up to validate the fraudulent and collusive sales to Buckner and Goodrich.

In *Jackson* vs. *Ludeling*, page 632, the Court said: It remains only to consider the effect of the judgment in the monition suit instituted by these defendants. * * They contend that the judgment in that suit conclusively establishes the validity of the sale made to them and bars the present bill. But we think such is not the effect of the judgment. The proceeding to homologate a sheriff's sale is peculiar to Louisiana. It is authorized by an act of the Legislature, passed March 10th, 1834. That act authorizes purchasers at sheriff's sales to apply for a monition to all persons interested, who can set up any right, title, or claim to the property described, in consequence of any *informality* in the order or decree or judgment of the court, under which the sale was made, or any *irregularity or illegality in the appointment and advertisement in time or manner of sale*, or for any other defect whatsoever, to show cause why the sale should not be confirmed and homologated. If no cause be shown, the judgment of homologation is conclusive upon the world. But conclusive of what? Conclusive that there have been no fatal informalities or irregularities or defects; we think of nothing more. The act has relation to mistakes or omissions of officers of the law. But there is nothing in it which authorizes an inquiry into or an adjudication upon questions of fraud; nothing which concludes the question, whether the purchasers have obtained their title by fraud, or whether they are trustees *mala fide* for others.

And such has been the ruling of the Louisiana courts. In *City Bank* vs. *Waldern* 1 A. 46, the court considered the effect and scope of the act. "It was passed," they said, "for the protection of *bona fide* purchasers, at judicial sales, from litigation concerning matters of form, a non-observance of which frequently exposed purchasers to unreasonable and vexatious suits. The difficulty of administering and preserving proofs of the observance of formalities was in the hands of the unscrupulous, the instrument of great annoyance and expense to those who had purchased and paid for property exposed to sale under the authority of our courts. We do not understand the operation of the act to extend beyond matters of form, nor that it purports to act upon matters 'dehors' the record."

This, manifestly, is the true construction of the statute and it is quite consistent with the enactment that the judgment of homologation is to be received and considered "as full and conclusive proof that the sale was duly made according to law, in virtue of a judgment or order legally and regularly pronounced in the interests of the parties duly represented." Fraud and trust are entirely outside of the record. A sale may have been conducted legally in all its processes and forms, and yet the purchaser may have been guilty of fraud, or may hold the property as a trustee. In this case the complainants rely upon no irregularity of proceeding, upon no absence of forms. The forms of law were scrupulously observed. But they rely upon faithlessness to trusts and common obligations upon combinations against the policy of the law and fraudulent, and upon confederate and successful efforts to deprive them wrongfully of property in which they had a large interest for the benefit of persons in whom they had a right to place confidence. Homologation is no obstacle to such a claim."

IV.

The pretended title of Julia Morgan and of her succession to three-fourths of the lands of the estate of Oliver J. Morgan, under an act of donation from her father, by notarial act passed before H. Hillman, notary, on the 9th of March, 1858, is of no value or validity in law whatever. The act, upon its face, is a disposition of property *causa mortis*—to have its effect after the death of Oliver J. Morgan. Oliver J. Morgan had two children, one of whom was dead at the time of the passage of this act of 1858, and was represented by a grandchild, Oliver J. Morgan's great grandchild. His daughter, Julia Morgan, was then living, and the mother of several children—Oliver J. Morgan's grandchildren. If this vast estate was left to be distributed *ab intestato* after his death, his great grandchild, by right of representation, would inherit one half of the entire estate, and his grandchildren, by his daughter, Julia, in case of her death, would divide the other half between them. It was for the purpose of equalizing, among his grandchildren and his great grandchild, the shares of his property that should come to each, that the act of 1858 was passed, and that purpose is distinctly declared in the act. It was clearly a disposition of property *mortis causa*, made by an instrument not purporting to be a last will, or characterized by any of the formalities required for such instruments, under pain of nullity: the act was, therefore, entirely void in law, for the Civil Code, article 1570 (1563), expressly provides that "No disposition *mortis causa* shall henceforth be made otherwise than by last will or testament. Every other form is abrogated."

Oliver J. Morgan, himself, became satisfied of the utter inefficiency of the dispositions made by him in the notarial act before Hillman, in 1858, and afterwards—that is to say, on the 1st of May, 1860—made his last will and testament in due form of law, whereby he appointed Oliver T. Morgan, his nephew, and the husband of his daughter, Julia, his executor, and disposed again of the lands he had previously attempted to dispose of by the act before Hillman, in precisely the same way, equalizing, as far as the law of Louisiana with regard to forced heirship would allow him to do so, the shares of his estate to be received by his grandchildren and his great grandchild. After his death, the lands covered by the dispositions, alike of the notarial act and of the will, were inventoried as the property of Oliver J. Morgan, at the time of his death, as they most certainly were. As the successors of Julia Morgan could claim *precisely the same three fourths* of the lands, by title of undoubted validity *under the will*; there was no occasion to claim title at all under *the void and invalid notarial act*, *except* that under the valid title they would *take the property subject to the payment of the testator's debts;* whereas, if they could hold *under the invalid title*, the claims of the creditors of Oliver J. Morgan could be evaded. And the setting up of this sham and void title, in preference to the real and valid title, was but a part of the general scheme to defraud the creditors of this princely estate, out of all recourse against it for the payment of their debts.

That the pretense of title in the succession of Julia Morgan, under the notarial deed of gift and sale of 1858, to three-fourths of the lands of Oliver J. Morgan, was a mere sham and blind, is obvious from the fact that, although Oliver T. Morgan, at the time he applied as executor of Oliver J. Morgan, for the sale of all the lands as the property of the succession of Oliver J. Morgan, for the ostensible purpose of paying debts of that succession, also applied for and obtained, as executor of his deceased wife, Julia Morgan, an order for the sale of three fourths of the same lands as the property of *her* succession, and advertised and sold the lands under the two conflicting orders; yet, in the account which he files after the sale, he credits the pretended proceeds of the sales of all the lands upon debts assumed to be due by the succession of Oliver J. Morgan—the proceeds of Westland to creditors for whom J. West Montgomery assumed to act—the proceeds of Melbourne, Albion and Wilton to a debt assumed to be due as a privileged debt to John A. Buckner, as tutor of his minor child, Mollie Buckner—and the proceeds of Morganna upon a claim of Sparrow & Montgomery, for services as attorneys of the succession of Oliver J. Morgan. So that, upon the face of the mortuary papers, the entire estate of Oliver J. Morgan was administered upon, and the proceeds distributed by the executor, Oliver T. Morgan, without the heirs of Julia Morgan, his own children, receiving so much as a nickel! Upon the face of the mortuary record, the whole estate was distributed without their receiving anything at all, and yet they were entitled, *under the will*, to three-fourths of the estate, after the payment of the debts. The evidence, to which reference has been made, shows that the mortuary record is a mere sham and a blind, and that the heirs of Julia Morgan, who appear to have received nothing, have been, before and since the pretended sales of the 19th of January, 1869, in the actual possession of three-fourths of the estate (deducting Westland and Morganna), and the actual receipt and enjoyment of the rents and revenues of the estate, *without any debts of the estate ever having been paid*, or appearing to be paid, except as to the credits allowed in the account, found at page 329, to John A. Buckner, tutor, J. West Montgomery, agent, and F. M. Goodrich, assignee of Sparrow & Montgomery, for attorneys's fees.

V.

In the application for rehearing (Transcript, page 358), it is stated that Ferdinand M. Goodrich, a defendant to the bill, died before the testimony in the cause had been taken; that before his death he had sold and conveyed the property conveyed to him by Oliver T. Morgan to one Boyd, who owned and possessed the same at the death of said Goodrich; that Barrow, administrator of Goodrich's estate, disclaimed all connection with the property and averred that he had no interest or right thereto, and that this appears in the testimony, and that the decree in annulling the deed to Goodrich and ordering a sale of the property, is erroneous and contrary to the rule and practice of the court.

The bill, by which Goodrich was made a defendant in the cause, was filed on the 24th of January, 1872. The subpœna to answer was served upon Goodrich, on the 20th of February, 1872, and on the 29th of June, 1872, he filed his answer—Transcript, page 27—in which he admits that there was a sale of the real estate of the succession of Oliver J. Morgan, under the orders of the Probate Court of the Parish of Carroll, and that the proceedings took place in reference to said property as described in the mortuary proceedings and in the deed to him from Oliver T. Morgan, executor; and avers that the sale was open, regular and according to law and the orders of the court, and that deeds have been made and possession of the property taken and the price of said property paid; and avers further that the sale was reported to the court and was, after legal delays, homologated and approved; and further he says that it is true that a monition was sued for and judgments rendered confirming the sale made of such property, and such proceedings had thereon as appears from the exhibit anexed to his answer, and he avers that the said monition is regular, and that the requirements of the law were complied with and his title confirmed; and he pleads the said proceedings in the courts, aforesaid, in bar as judgments of courts of competent jurisdiction, having entire control over the subject. In other respects his answer to the bill is similar to that afterwards made by the executor, Oliver T. Morgan, the substance of which has already been stated.

After the filing of his answer in the cause, on the 29th of June, 1872, to-wit, on the 29th of December, 1874, Goodrich, by notarial act, conveyed the property covered by the deed to him from the executor, Oliver T. Morgan, and which was attacked by the bill, to Samuel Boyd, of New Orleans. It has already been shown that the real consideration of this transfer to Boyd was a debt of some twenty thousand dollars due to Boyd by the firm of Johnson & Goodrich, of which Ferdinand M. Goodrich was one of the partners: and that at the same time the defendant, J. W. Montgomery, was indebted to that firm in a sum of from ten to twenty thousand dollars, which was settled by this transfer of Morganna plantation to Boyd, in satisfaction of the debt due to him by said firm.

After the filing of Goodrich's answer, on the 29th of June, 1872, and the transfer by him to Boyd of the Morganna plantation, on the 29th of December, 1874, and prior to the 19th of February, 1877, Goodrich died, and David N. Barrow qualified as his administrator, and the suit was revived against him in his said capacity.—Transcript, p. 80—and he appeared and put in an answer, as stated in the application for rehearing, setting forth the sale of the property in litigation to Boyd by Goodrich in his life time, and disclaiming all right to the property.

It is objected that under this state of facts and pleadings there is error in the decree in annulling the deed to Goodrich and ordering a sale of the property.

Upon the authorities, the objection is altogether untenable. The general rule, as laid down in Daniel, Equity Pleading and Practice (5th Am. Ed. by Cooper), p. 281 and note 7 is, that an assignee, under a voluntary assignment, *pendente lite*, need not be made party to a bill, or be brought before the Court; that every person purchasing, *pendente lite*, is treated as a purchaser with notice, and is subject to all the equities of the person under whom he claims in privity. In support of this doctrine the following authorities are cited: Story, Eq. Pl., §§ 156, 351; 1 Story, Eq. Jur. § 406; Sedgwick vs. Cleveland, 7 Paige, 287; Vanhorn vs. Throckmorton, 8 Paige 33; Cook vs. Nancius, 5 Johns. Ch. 93; Murrey vs. Ballou, 1 Johns Ch. 577; Murrey vs. Lylburn, 2 Johns. Ch 411; 2 Story, Eq. Jur. § 908; Hoxie vs. Carr, 1 Sumner, 173; Branden vs. Cabiness, 10 Ala. 155; 1 Boulden vs. Lanahan, 29 Md. 200.

The *lis pendens* commences with the service of process after bill filed. Anon. Vernon, 319; Hayden vs. Bucklin, 9 Paige, 512; Haughwort vs. Murphy, 7 C. E. Green, 531; Allen vs. Poole, 54 Miss. 323.

The alienation of property, pending the litigation, will, ordinarily have no effect on the litigation. Kino vs. Rudkin, 6 Ch Div. 160; Baird vs. Baird, Phil. Equ. (N. C.) 317; Sumner vs. Waugh, 56 Ill. 531; Truitt vs. Truitt, 38 Ind. 61; Sheridan vs. Andrews, 49 N. Y. 478.

An assignment by the defendant of his interest in the subject matter of a pending suit does not defeat the suit, nor in any way affect it, the assignee being bound by what is done against his assignor. Williams vs. Winans, 5 C. E. Green, 392.

VI.

In the application for rehearing, it is said—(Transcript, p. 355)—that the decree provides only for the payment of a debt due the estate of William Gay, to be paid out of the proceeds of a sale ordered to be made by the decree; that it appears by the bill that it was filed on behalf of all the creditors of the succession; that the debts of the succession were large, and that the *defendants* were claimants with many others as creditors, and that the sale avoided was made to pay debts, and that the bids made were so appropriated by the Parish Court; that such being the case the decree departs from the bill, and the prayer of the bill, and does not make provision for the adjustment of equities manifest upon the proceedings, which defendants aver to be injurious to all parties connected with the case and the succession of Oliver J. Morgan, and contrary to law and the procedure of the court.

We submit upon authority, that there is no error in the decree, in granting the relief awarded in the manner specified therein, and in limiting to the complainant in the cause—the only party before the court seeking relief—the relief so awarded.

As was said by this court in the Broderick will case—21

Wallace, 504—whilst alterations in the jurisdiction of the State Courts cannot affect the equitable jurisdiction of the Federal Courts, so long as the equitable rights themselves remain, yet, *an enlargement* of equitable rights may be administered by the Federal Courts as well as by the State Courts.

By the law of Louisiana, C. C. 1970, 1971, a specific remedy is provided whereby creditors may avoid contracts of their debtors, made in fraud of their rights. The remedy is one strictly of an equitable character, enforceable as well in Federal Courts of Chancery, as in State Courts of ordinary general jurisdiction.

By article C. C. 1790, it is declared that—"The law gives to every creditor, when there is no cession of goods, as well as to the representative of all the creditors, when there is such a cession, or other proceeding, by which they are collectively represented, an action to annul any contract made in fraud of their rights." And by the next article, 1791, it is declared that—"The judgment in this action, if maintained, shall be that the contract shall be avoided *in its effects on the complaining creditors*, and that all the property or money taken from the original debtor's estate by virtue thereof, or the value of such property to the amount of the debt, *be applied to the payment of the plaintiff.*"

As to the remedy here provided, as was said by the Supreme Court of Louisiana in *Muse* vs. *Yarborough*, 11 L R. 530, "No difference exists between a voluntary conveyance of property for fraudulent purposes and such an alienation disguised under the forms of judicial proceedings."

But apart from the statuary right, under the law of Louisiana, the decree in limiting to the complainant in the cause the relief which it awards, is fully warranted by the general principles of equity, jurisprudence and procedure.

In *Woodgate* vs. *Field*, 2 Hare, 211, the plaintiff, claiming to be a creditor of the intestate, on a promissory note, filed his bill on behalf himself and *all other creditors* against the administrator for payment. The defendant by answer admitted assets, but denied the debt. The plaintiff went into evidence and proved the note, and *at the hearing;* his counsel asked for an immediate decree against the defendant, for the payment of the debt. Counsel for the defendant objected that the decree must be for an account in the usual way, that the admission of the executor did not entitle the plaintiff to a decree, and that the uniform practice was to direct an account only, in the first instance; and it was further objected that not only had the other creditors of the intestate an interest, which might be opposed to the plaintiff, but they had *an inchoate interest in the prosecution of the suit,* and that if it was not dismissed, they had an interest *in requiring that it should be prosecuted in such a way as to give them the benefit of it.*

Counsel for plaintiff replied that other creditors had no interest in the suit; that plaintiff might dismiss his bill at any time before decree; and that the defendant might also have paid the debt and costs, and procured the bill to be dismissed before the hearing.

The Vice Chancellor, SIR JAMES WIGRAM, said: "The suit is instituted by a simple contract creditor on behalf of himself and all other creditors, seeking the payment of a debt alleged to be secured by the promissory note of the intestate. * * * Evidence has been gone into on the part of the plaintiff to prove the debt and he asks an immediate decree for payment. The defendant says it ought to be referred to the master to take the account, not only of the estate but of what other debts are owing from the testator. * * *

I entertain no doubt upon this point, nor can I, upon inquiry, find that it was ever doubted in the other branches of the Court. In effect the rule is proved by the fact that the creditor and the executor may settle the matter pending the suit, by the latter paying the debt and the costs of the suits * * If the Court would compel a creditor to accept payment of his debt, when the executor offers to pay it with the costs of the suit, *where is the line to be drawn beyond which the creditor cannot be allowed to have the exclusive benefit of his own suit?* I am satisfied that, in this case, there ought to be a decree for immediate payment."

So, in *Hubbell* vs. *Warren*, 8 Allen, 176, the Court said: "This bill is brought by the plaintiff for the benefit of himself and all other persons whose estates are similarly situated with his own," etc. "But *as no other person has actually come in to prosecute the suit* jointly with the plaintiff, it stands like a creditor's bill and he is to be regarded as *dominus litis*."

In *Bean* vs. *Smith*, 2 Mason, before referred to, the decree, p. 300, was, that the deeds attacked by the bill were made by one of the defendants "with the intent to defraud his creditors and particularly the plaintiff, and are, therefore, *as to the plaintiff*, utterly void," and that the plaintiff had a right to be paid the principal of the debt due him with interest up to the time of the decree, which debt decreed to be a charge on the lands and the rents and profits thereof, which had accrued to the respondents, or might have accrued to them without default, since the estates contained in the conveyances, which were avoided as to the plaintiff, had come to their hands, and it was decreed that the master should sell the lands so conveyed to the respondents by the conveyances aforesaid, or a sufficiency thereof, to pay the plaintiff's debt, interest and costs, at public auction to the highest bidder, in case the respondents should fail to pay within time limited by the decree.

So, in *McCalmont* vs. *Lawrence*, 1 Blatchford, 235, it was held by MR. JUSTICE NELSON:

1. That the creditor who first institutes a suit in Chancery to avoid a fraudulent conveyance, is entitled to relief, without regard to other creditors standing in the same right, but who have not made themselves joint parties with him:

2. That the action of Chancery upon the fraudulent grant or assignment is only to the extent of supplying a remedy to the

suing creditor; and that as to all other parties the assignment remains as if no proceedings had been taken.

In conclusion, we respectfully submit that there is no error in the decree in any respect, and that it should be affirmed as rendered.

A grosser case of fraud--of wholesale spoliation--than that disclosed in this record, has, perhaps, never been disguised under the form of judicial proceedings.

"Equity," however, "looks at substance and not at form. It penetrates beyond externals to the substance of things, and delights to brush away barricades of written articles and formal documents, when satisfied that they have been devised to conceal and protect fraud." 1 Dill. 85.

This cause, in which the litigation has been protracted now for nearly twelve years, is confidently submitted for final adjudication to the highest court of equity in the land.

HENRY B. KELLY,
JULIUS ARONI,
Of Counsel.

111-640

Supreme Court of the United States.

OCTOBER TERM, 1883.

MATTHEW F. JOHNSON, Dative Testamentary Executor of Oliver J. Morgan, Deceased, et. al., ... Appellants, VERSUS **STEPHENSON WATERS**, Administrator of Succession of Wm. Gay, Deceased, . Appellee.	No. 54.

BRIEF FOR APPELLEE.

SIMRALL & BODLEY,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1883.

MATTHEW F. JOHNSON, DATIVE TESTAMENTARY EXECUTOR OF OLIVER J. MORGAN, DECEASED, ET AL., ... APPELLANTS,

vs.

STEPHENSON WATERS, ADMINISTRATOR OF SUCCESSION OF WM. GAY, DECEASED, . . APPELLEE.

BRIEF FOR APPELLEE—[redacted]

The appeal is from a decree rendered by the Circuit Court of the United States for the District of Louisiana, on the 18th of May, 1880, by His Honor W. B. Woods, at present one of the Justices of this Court.

That decree (page 354, record) adjudges:

First—That the estate of said Oliver J. Morgan, deceased, herein represented by Matthew F. Johnson, dative executor of the last will of said Oliver J. Morgan, is indebted to the estate of said Wm. Gay, deceased, herein represented by Stephenson Waters, administrator, in the sum of thirty-three thousand two hundred and fifty dollars, with interest at five per cent. per annum until final payment; on thirteen thousand dollars from the 10th of January, 1861; on ten thousand two hundred and fifty dollars from the 16th of January, 1861, and on ten thousand dollars from the 28th of January, 1861; and for all costs of this suit.

Second—That the sales of the lands of said estate of Oliver J. Morgan, adjudicated in parcels and sub-divisions on the 19th of January, 1869, to John A. Buckner, J. West Montgomery, agent, and Ferdinand M. Goodrich, respectively, and conveyed to them, respectively, by Oliver T. Morgan, executor, by notarial acts passed before D. C. Jenkins, notary public, on the 23d of January, 1869, and recorded in the office of the Parish Recorder of the Parish of Carroll, in Notarial Book N, at folios 212, 213, and 214, be declared null and void as against the estate of said Wm. Gay, complainant herein; and that all the lands described in said notarial acts, together with all the buildings and improvements thereon, be seized and sold by the marshal to satisfy said debt as due by the estate of said Oliver J. Morgan to the estate of said Wm. Gay, with interest and costs as aforesaid, according to law and to the eighth equity rule relative to the execution of decrees for the payment of money.

The decree sets aside the said sales because it was, according to the undoubted proof in the record, the consummation of a fraudulent scheme to prevent Morgan's creditors from collecting their debts.

Oliver J. Morgan had died, in 1860, the owner of five—amongst the best—plantations in Louisiana, with over 15,000 acres in all, estimated at near one million of dollars in value, and slaves and personalty about $300,000 in value. He left a will, and made his son-in-law, Oliver T. Morgan, who had married testator's daughter Julia, executor thereof, and first of all provided for the payment of his debts.

The executor and heirs and devisees went into possession of this immense estate, and jointly occupied and collected some $90,000—proceeds of 2,500 bales of cotton in 1860 (Bs. deposition, p. 196); over $20,000 from Court of Claims for proceeds of cotton (drafts paid to Johnson, executor, p. 287); besides nearly $40,000—proceeds of other personalty on the premises at testator's death (see inventory personalty, p. 133); and in addition nearly $100,000 from rents of land where they were not actually occupying; and out of these vast sums paid no debts, as far as this record shows. This state of things continued until 1869, when the parties in interest, having pocketed all the money and personalty, including enormous rents up to that time, conceived the plan of practicing a further gigantic fraud upon Morgan's creditors by procuring a sham judicial sale of the lands also, and having four out of five of these plantations sold and adjudicated to Morgan's heirs and devisees, without the actual payment of a nickel. This was done, in part, under the guise of a pretended lien-claim in favor of one of the heirs named Buckner, which the record shows was no lien on the property. As a peace offering to the creditors, there was adjudicated to one J. W. Montgomery, as their pretended agent, about 5,000 acres of the most worthless land. The creditors not only had not authorized Montgomery to make such settlement or purchase, but had no knowledge of it; and probably to this day some may have never heard of it. The chief actors in this conspiracy and fraudulent sale were the heirs and executor and their attorneys, together with the attorney of the complainant, Wm. Gay, who not only participated, but kept Gay in profound ignorance of every step that was taken.

The object was to cover up the fraud under the forms of law.

The result has been to continue the great bulk of the property in the uninterrupted possession of Morgan's heirs and the attorney who received one of the plantations as his share of the spoils, leaving this large debt of Wm. Gay's unpaid, now amounting to over $70,000. We will not examine in detail the evidence of this fraud, which has been thoroughly presented in the brief of associate counsel. That evidence is voluminous, and more than sustains the charges in complainant's bill.

But without any other evidence on our part appellants can be convicted by this record of intentional wrong, out of their own mouths, and this we now proceed to show.

I. After the fraudulent distribution of these lands amongst Morgan's heirs in 1869, Edward Sparrow, who was the agent, or attorney, of Morgan's executor, as well as Gay's agent, or attorney, without any authority from Gay, turned his claim over to another attorney, E. D. Farrar, to take a judgment thereon, and then procured another attorney, F. M. Goodrich, to make a merely nominal defense for Morgan's estate, so as to facilitate the procurement of said judgment, and in consideration thereof it is claimed that Mr. Sparrow, the only authorized agent or attorney of Gay, who had become also the representative of Morgan's estate, exacted a promise from the unauthorized attorney of Gay, that he, Gay, would acquiesce in and stand by these fraudulent sales.

All this was done without any knowledge of Gay, and there was no necessity for the taking of any further judgment; for the claim had already been placed upon the footing of a judgment in 1866, and all questions of prescription thereby cut off, by the claim having been acknowledged by

Morgan's executor, and ranked amongst the debts of the succession, and ordered to be paid by the Probate Judge in due course of administration. (See amended bill, page 353).

This was another link in the chain of fraud. If true, it was nothing more nor less than a confederation between Morgan's representatives and Gay's attorneys, without Gay's knowledge, and against his will, to tie his hands; so that he would thereafter be prevented from disturbing this well laid scheme for the benefit of Morgan's heirs.

In the answer herein of O. T. Morgan, executor, record, page 66, he says: "This defendant further avers that his answer to the demand of plaintiff in that case, filed by his attorney, was so filed without citation to save costs, and as this defendant was informed, upon an agreement and understanding between plaintiff's counsel and respondents' attorney to the following effect: That plaintiff had concurred and agreed that no action should be resorted to to disturb the proceedings had, and the provision made for the benefit of the ordinary creditors of the succession in the Probate Court for the Parish of Carroll, having exclusive jurisdiction over said succession."

J. W. Montgomery, who was the law partner of Edward Sparrow, before mentioned, in his answer herein, page 21, giving his version as to how Gay's judgment was procured, says: "That the petition in that behalf was presented to F. M. Goodrich, attorney for defendant, by Edward Sparrow, at the request of E. D. Farrar, attorney for Gay, asking if he, said Goodrich, objected to putting the case at issue by a general denial to save costs, and for the purpose above set forth; that said Goodrich consented to file his answer thereto, upon the condition that said Gay would, after obtaining a judgment, acquiesce in the provision aforesaid, and in the purchase made by said Montgomery, agent for his benefit, in common with all the other creditors named in the deed to said purchaser."

The same Montgomery, in his deposition herein, page 174, says: "In the years 1867-8, the heirs of Mrs. Narcissa Morgan, deceased wife of Oliver J. Morgan, held a large claim against the estate of said Oliver J. Morgan, secured by a mortgage on his property, and which they were proceeding to enforce against the estate of the sale of property aforesaid. There was no such mortgage. See Recorder's certificate, pages 288-9. That at that time the most valuable properties in the county were reduced to a mere nominal value, and that the claim of said heirs would have swept away the whole of said Oliver J. Morgan's estate. That he, witness, in conjunction with others who held claims against said estate, proposed a compromise with the heirs before mentioned, and which was accepted, and by the terms of which the said heirs agreed to abandon to the creditors the Westland plantation, including 5,040 acres of land; that at the sale of property this plantation was bought in for the benefit of the creditors of Oliver J. Morgan. Among said creditors was one Wm. Gay, who held a large claim against said estate, but some of the other creditors objected to his claim on the ground that it was prescribed. It was therefore determined by the attorney who held that claim to hand over the same to E. D. Farrar, attorney-at-law, to bring a sort of amicable suit in the United States Court on said claim against the estate of said Oliver J. Morgan, in which Court a rule on the subject of prescription was different from the ruling of our State courts; the whole intention being to let Gay get a judgment on his claim, so that he might participate in the benefits of said compromise, and it was therefore determined to let F. M. Goodrich draw up an answer to file in said suit; but the distinct understanding was that said answer should not be filed in said suit unless said Gay should accept the terms of said compromise, and bind himself not to disturb the same."

Again, on re-examination, the same witness says, page 238, in further explanation: "E. D. Farrar, attorney for Gay, had filed a suit, or was about to file a suit in the United States Court on Gay's claim against the estate of Oliver J. Morgan, and he wanted Edward Sparrow, who was agent for the executor, to file an answer so as to place the case at issue. Edward Sparrow was willing to make no opposition or serious defense to Gay's suit, but was desirous that he might get his judgment, and thus obviate the formidable plea of prescription, and he therefore consented and agreed to the filing of said answer, the simple plea of general issue, as witness now remembers.

"But as it was not expected or desired by him as representative of the executor that Gay should gain any advantage over the ordinary creditors, he, Edward Sparrow, acting as agent for the executor, exacted and required that the answer should not be used or filed, unless Gay would agree to come in with the ordinary creditors in the arrangement or concession *forced out of Buckner*, and expected that his demand in this respect would be complied with. He forwarded the answer to E. D. Farrar, attorney for Gay, and as Gay did not sign the agreement that was made the condition upon which the answer was to be used, the filing of the answer, making the executor a party to the suit, was wholly unauthorized."

These facts were set up by defendants in their answers and proved by them, to show that in equity we ought not to have any relief under that common law judgment. We are not claiming anything under that judgment. Our decree herein is based upon Gay's original claim as allowed and acknowledged by the executor in 1866, and ordered to be paid by the Probate Court. But if we were claiming under the original judgment, Gay's rights could not be prejudiced by the fraud attempted upon him, because the ground of defendant's complaint is, "*that Gay did not sign the agreement that was made.*" In fact, he never heard of it, and it was never intended that he should hear of it. The intention was to bind him through the act of an unauthorized attorney.

But when defendants exhibited these facts they proved a great deal more than they intended. They prove a conspiracy between Gay's attorney and Morgan's executor and attorney through a secret arrangement to keep Gay from ever assailing the disposition made of the Morgan lands. They prove that Gay's own attorney, who was also the attorney for Morgan's executor, with the connivance of said executor, and without any authority from Gay, placed Gay's claim in the hands of another attorney, for the express purpose of making this fraudulent arrangement. It is true that defendants claim that Mr. Sparrow, who was the attorney of Morgan's executor, was not Gay's attorney.

We do not believe it is possible to read this record and reach that conclusion. In record, page 104, where Edward Sparrow, in a letter to Wm. Gay, dated Providence, 19 April, 1866, says: "All your notes against the estate of O. J. Morgan, handed me in New Orleans, have been acknowledged by the executor and ordered to be paid by our District Judge. Shall I require Mr. Henry Goodrich to acknowledge them, and if so, and he declines, what steps shall I take?" This language is inconsistent with any other idea than that he was employed as Gay's attorney in the matter.

J. W. Montgomery, the law partner of Sparrow, in his deposition already quoted, page 174, says: "It was therefore determined by the attorney who held that claim to hand over the same to E. D. Farrar, attorney-at-law." Edward Sparrow was the attorney who held the claim, and it was *his* determination (not Gay's) to turn it over to Farrar.

Mr. Sparrow being the attorney for both Gay and Morgan's estate in the same matter, could not appear as attorney of record for either of them. So he determines to have E. D. Farrar to appear for Gay in the suit, and F. M. Goodrich for Morgan's estate; and they all together determine, without Gay's knowledge, that they will let the Morgan heirs keep the lands adjudicated to them, and that Gay shall not disturb the pretended compromise under which the heirs acquired these lands.

This compromise is spoken of on pages 174 and 258 by defendants as a compromise for the benefit of Morgan's creditors, in which the Westland plantation of overflowed and wild lands was "*forced out of Buckner,*" and Mr. Edward Sparrow was trying to get Mr. Gay also to participate in the benefits of this compromise; but the record says on page 258: "*As it was not expected or desired by him as representative of the executor that Gay should gain any advantage over the ordinary creditors*, he, Edward Sparrow, acting as agent for the executor, exacted or required that the answer should not be used or filed, unless Gay would agree to come in with the ordinary creditors in the arrangement or concession forced out of Buckner." Gay did not do it. "*Hinc illæ lachrymæ.*" Could any pretense be more absurd or transparent? How could Gay gain any advantage over the other creditors, except by forcing more land out of Buckner? The interest of all the creditors was that Gay, or somebody else, should "disturb this settlement," and compel Buckner or Morgan's heirs to disgorge the remainder of the lands. For if such diligent creditor did not thereby get his debt paid in full, it would certainly diminish his pro rata out of the lands already conceded to the creditors.

The attempt to make it appear that these tears were shed over *Morgan's ordinary creditors* in anticipation of a possible disturbance of this settlement by Gay is so disingenuous as to make the fraud more apparent.

The continued effort of Morgan's executor, and heirs and attorneys, to suppress an investigation of this pretended compromise, showed a guilty knowledge of the fraud.

The anxiety was for Morgan's heirs, least they should be compelled to surrender the lands allotted to them through Buckner, to whom the conveyance was made. There must have been some anxiety, also, for the attorneys in the transaction; for the record shows that they come in for a share of the lands, in this illegal compromise for the benefit of Morgan's creditors.

The Morgana plantation of 1,500 acres was adjudicated to F. M. Goodrich, the same attorney who was to make the nominal defense for Morgan's executor in the Gay suit, in which it was attempted to bind Gay, through an unauthorized attorney, never to disturb these conveyances to said Goodrich and Buckner and Montgomery.

The sequel showed that while the deed of the Morgana plantation was made to F. M. Goodrich alone, the said J. W. Montgomery was jointly interested with him in it.

This plantation had been set apart to Goodrich and Montgomery for professional services to the Morgan estate in these matters.

The said Montgomery was the law partner of Edward

Sparrow, who held the claim of Wm. Gay. These facts need no comment. See record, pages 98, 99, 111, 219, and 220.

When the account of Morgan's executor comes to be settled opposition is made by two creditors, Thos. O. Menx and Dennis Rook. See their petitions, pages 111, 113, filed on 7th of March, 1870, setting up some of the same fraudulent matters relied on herein.

On 14th of June, 1870, an order is made partially homologating and confirming said account, reciting that said opposition had been withdrawn. See record, page 114.

The opposition by Menx was silenced by more land being "*forced out of Buckner.*" See deed from Buckner to Menx, page 285, conveying him twelve acres of land, with a *residence* thereon. An effort was made to explain this by showing that Menx claimed that Mr. Morgan had agreed to give him this land for valuable services rendered. But the deed recites "the consideration of this sale is a claim held by T. O. Menx against the succession of Oliver J. Morgan, deceased, now on file in Clerks' office for the Thirteenth District, for the Parish of Carroll, number the docket of said court 5,473, which said claim, amounting to $1,509.20, the said Menx transfers to said Buckner, accepting said claim as payment in full for said property, he agreeing, however, that *in the event said Menx should be evicted* in his title to said property, to re-transfer said claim in the condition in which it now stands against the succession of said O. J. Morgan, deceased, the said Menx agreeing not to hold the said Buckner any further responsible on account of said eviction."

This is a part of the property allotted to Buckner for the Morgan heirs in the settlement; and the deed shows on its face that he considered that the only safety to him was to silence all opposition to the settlement; and the record shows that all other opposition was silenced (doubtless by equally valuable considerations), until this action was brought by Gay.

II. An effort was made to cure this fraud by *process of monition*, but no judicial proceeding can give validity to fraud. It is laid down in the *Duchess of Kingston's case* "that fraud will vitiate the most solemn adjudications of all courts." See also 21 Wal., 512.

Besides, under the Louisiana Code, this proceeding was only intended to cover defects, irregularities, and matters of form, and then only where a purchase is made in good faith. The very form in which the court grants the process of monition shows this, page 45.

"Now, therefore, I do grant this monition in the name of the State of Louisiana, calling upon all persons who can set up any right to said property in consequence of any informalities in the orders and decrees aforesaid under which the said sale was made, any irregularity or illegality in the appraisement or advertisement, or time and manner of sale, or for any other defect whatsoever, to show cause," &c.

III. Time does not sanctify fraud. The present holders of said property (with the exception of the attorney mentioned, and Boyd, to whom we will hereafter refer), are Morgan's heirs, and the same persons who held prior to the alleged sales and adjudications, and ever since Morgan's death. There has never been any legal and actual change of title or possession. They have always held said property in trust for Morgan's creditors, and still hold it, charged with payment of his debt.

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Trustees, whether created ~~by~~ such law or by contract, can not avail themselves of lapse of time to the prejudice of the rights of the *cesti qui* trust. Trustees of Lexington *v.* Lindsay, 2 Mar., 445. Especially is this true where a person becomes trustee by operation of law, through his own wrong. In the matter of limitation the Federal Court of Chancery does not arbitrarily apply the State rules, but is governed by "its own inherent principles of justice, and decides accordingly. * * Every case is governed by its own circumstances." Sullivan *v.* Railroad Company, 4 Otto, 810,811. Fisher *v.* Boody, *et al.*, 1 Curtis, 218.

We understand the same rule to obtain in the United States courts as in the English Chancery. In the case of Irwin, *et al.*, *v.* Kirkpatrick (3 Eng. L. & E. R., 24), decided in the House of Lords in 1851, Lord Brougham said: "A court of equity will overleap the barrier of time, to get at the fraudulent practice."

Judge Curtis, in the case above, of Fisher *v.* Boody, quotes that opinion with approbation, and says: "That is the true doctrine on the subject."

IV. By deed December, 1874 (page 345), the said Ferdinand M. Goodrich conveyed the Morgana plantation to one Samuel Boyd. The particulars of the transaction are given in the deposition of Wm. A. Johnson, pages 98 and 99.

It is claimed that the proceedings herein are irregular because Boyd was not made a party to this suit. The suit was brought in January, 1872—more than two years before the conveyance to Boyd, and is founded upon the idea that Goodrich's title was acquired through fraud and had no validity; and seeks to avoid it, and subject the said Morgana plantation to the payment of Morgan's debts.

Boyd was therefore a *lis pendens* purchaser, and not a necessary party to this suit.

V. The decree is also complained of because it only makes provision for the payment of the debt of Wm. Gay out of the proceeds of sale ordered herein.

When the suit was brought it was intended to give any other creditor the right to come in and share in the fruits of the litigation. But the final decree was not entered until after eight years of litigation; and no other creditor having appeared to receive any of the benefits or share any of the burdens, the court clearly had the right to make provision only for the complaining creditor. This is in accordance with the usual equity pratice.

There is also a provision in the revised Civil Code of Louisiana (1870) which seems to cover the case.

Under the head of actions of creditors in avoidance of contracts, we find (sec. 1972): "The judgment in this action, if maintained, shall be that the contracts be avoided as to its effects on the complaining creditors, and that all the property or money taken from the original debtor's estate, by virtue thereof, or the value of such property to the amount of the debt, be applied to the payment of the plaintiff."

VI. As to the question of jurisdiction, there can be no doubt in this action, between a citizen of Kentucky and a citizen of Louisiana, that the United States Circuit Court had original equitable jurisdiction, and could grant the relief given in the decree herein. So expressly decided by this Court in Hagan *v.* Walker, 14 How., 29, where the Court says: "That equity has original jurisdiction of a bill against an administrator, and one to whom property of a decedent has been conveyed in fraud of creditors, to subject such property to the payment of complainant's debts."

It matters not what exclusive jurisdiction certain State courts may have in matters of settling [illegible] administrator's accounts or otherwise; it can not interfere with the equitable jurisdiction of the United States courts.

As said by this Court in Payne *v.* Hook, 7 Wallace, p. 430: "The equity jurisdiction conferred on the Federal courts is the same that the High Court of Chancery in England possesses; is subject to neither limitation or restraint by State legislation."

These and other questions have been more fully presented in the argument of associate and senior counsel.

This brief is only intended as a supplement.

Respectfully submitted,

SIMRALL & BODLEY,
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